



# राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

खण्ड 21 ]

शिमला, शनिवार, 10 फरवरी, 1973/21 माघ, 1894

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10 फरवरी, 1973/21 माघ, 1894 को समाप्त होने वाले सप्ताह में निम्नलिखित विज्ञप्तियां 'असाधारण राजपत्र, हिमाचल प्रदेश' में प्रकाशित हुईं:—

विज्ञप्ति की संख्या	विभाग का नाम	विषय
No. 11-9/71-Co-op. (F&S) I, dated the 6th February, 1973.	Food and Supplies Department.	Authorising all the District Magistrates and Sub-Divisional Magistrates of Himachal Pradesh to exercise powers under clause 4 of the Himachal Pradesh Guest Control Order, 1973.
No. 11-9/71-Co-op. (F&S) II, dated the 6th February, 1973.	-do-	Authorising certain Officers of Food and Supplies Department to exercise powers under clause 5 of the Himachal Pradesh Guest Control Order, 1973.
No. 1-30/70-II-LSG, dated the 2nd February, 1973.	Local Self Government Department.	Designating Senior Subordinate Judges and Subordinate Judges in Himachal Pradesh as Controller under section 2 (b) of the Himachal Pradesh Urban Rent Control Act, 1971.
No. 10-29/72-V.S., dated the 12th December, 1972.	Vidhan Sabha Secretariat	The Himachal Pradesh Legislative Assembly Members Pension Bill, 1972 (Bill No. 27 of 1972) as introduced in the Legislative Assembly on the 12th December, 1972.
No. 11-9/71-Co-op (F&S), dated the 8th February, 1973.	Food and Supplies Department	The Himachal Pradesh Guest Control (First Amendment) Order 1973.

## भाग 1—बंधनिक नियमों को छोड़ कर हिमाचल प्रदेश के राज्यपाल और हिमाचल प्रदेश हाई कोर्ट द्वारा अधिसूचनाएं इत्यादि

### हिमाचल प्रदेश हाई कोर्ट

#### NOTIFICATION

*Simla-1, the 23rd January, 1973*

No. HHC/GAZ/3-32/71-712.—The Hon'ble the Chief Justice and Judges have been pleased to grant the following leave in favour of Shri Roop Singh, Senior Sub-Judge, Mandi:—

1. 5 days earned leave from 4th to 8th September, 1972.
2. 13 days earned leave with effect from 11th December, 1972 to 23rd December, 1972, with permission to prefix and suffix holidays falling on 9th, 10th, 24th and 25th December, 1972.

Certified that Shri Roop Singh, would have continued to officiate as Senior Sub-Judge but for his proceeding on leave during the above-mentioned period.

It is also certified that Shri Roop Singh was likely to return to the same station after the expiry of his leave.

By order,  
Sd/-  
Registrar.

### हिमाचल प्रदेश सरकार

#### PERSONNEL (A) DEPARTMENT NOTIFICATION

*Simla-2, the 19th January, 1973*

No. 1-18/67-Apptt. (DP).—The Governor, Himachal Pradesh is pleased to accord sanction to the grant of 59 days earned leave from the date of availing in favour of Shri J. S. Dulat, I.P.S. (H.P.) presently posted as Superintendent of Police Vigilance, Simla.

2. Certified that Shri J. S. Dulat would have continued to officiate against the post of Superintendent of Police but for his proceeding on 59 days earned leave.

3. Certified that Shri J. S. Dulat will return to the station from where he proceeds on leave.

4. The Governor, is further pleased to order that Shri Lashkari Ram, I.P.S., A.I.G. of Police (Railway and Traffic), Simla shall look after the work of the post of Superintendent of Police Vigilance, during the period of earned leave of Shri J. S. Dulat, in addition to his own duties.

A. K. GOSWAMI,  
Joint Secretary.

#### PERSONNEL DEPARTMENT (VIGILANCE) NOTIFICATIONS

*Simla-2, the 9th January, 1973*

No. 8-5/72-Vig. (Grv).—In supersession of this Government notification No. 3-2/71-GAD, dated 7th September, 1972 and subsequent modification dated 23rd June, 1972, the Governor, Himachal Pradesh is pleased to reconstitute the Grievances Committee at the district level for Kangra district as under:—

1. Agriculture Minister Chairman
2. Minister of State for Local Self Government Chairman

\* Meetings to be presided over by rotation. Senior to preside first.

3. Deputy Commissioner, Dharamsala	Vice-Chairman
4. All M. Ps. of the District	Member
5. All M. L. As. of the District	-do-
6. Superintendent of Police	-do-
7. Chief Medical Officer, Dharamsala	-do-
8. S. E., P. W. D., Dharamsala	-do-
9. S. E., Hydel Circle, Dharamsala	-do-
10. Principal, Government College, Dharamsala	-do-
11. Principal, Government College of Education, Dharamsala	-do-
12. D. D. P. O., Dharamsala	-do-
13. Conservator of Forests, Dharamsala	-do-
14. XEN, P. W. D., Dharamsala	-do-
15. XEN, Irrigation, Dharamsala	-do-
16. XEN, Electricity, Dharamsala	-do-
17. Supdt. District Jail, Dharamsala	-do-
18. District Food and Supplies Officer, Dharamsala	-do-
19. D. P. R. O., Dharamsala	-do-
20. Commandant Home Guards, Dharamsala	-do-
21. District Statistical Officer, Dharamsala	-do-
22. District Industries Officer, Dharamsala	-do-
23. District Education Officer, Dharamsala	-do-
24. District Welfare Officer, Dharamsala	-do-
25. Deputy Director of Education, Dharamsala	-do-
26. Excise and Taxation Officer, Dharamsala	-do-
27. D. F. O., Dharamsala	-do-
28. District Animal Husbandry Officer, Dharamsala	-do-
29. Treasury Officer, Dharamsala	-do-
30. Deputy Director Agriculture, Dharamsala	-do-
31. Settlement Officer, Dharamsala	-do-
32. Regional Transport Officer, Dharamsala	-do-
33. S. D. O. (C) Kangra	-do-
34. S. D. O. (C) Nurpur	-do-
35. S. D. O. (C) Palampur	-do-
36. S. D. O. (C) Dehra	-do-
37. D. F. O., Nurpur	-do-
38. Fisheries Officer, Kangra	-do-
39. XEN, P. W. D., Dehra	-do-
40. XEN, P. W. D., Palampur	-do-
41. XEN, Electricity, Palampur	-do-
42. SEN, P. W. D., Nurpur	-do-
43. Deputy Registrar, Co-op. Societies, Palampur	-do-
44. District Employment Officer, Dharamsala	-do-
45. Deputy Director Industries, Palampur	-do-
46. Deputy Director Animal Husbandry, Palampur	-do-
47. XEN, Development, Dharamsala	-do-
48. G. A. to D. C. Dharamsala	Member-Secretary.

Notes:—(i) In the absence of the Chairman, the Vice-Chairman will preside over the meeting of the District Committee.

(ii) The Deputy Commissioner will also be the District Grievances Officer and will be assisted by the General Assistant/S.D.O. (District Headquarters) in this respect.

(iii) For each district there will be a fixed date for holding the meeting of the Committee, and every officer who is a member of the Committee shall attend the meeting personally and regularly. In exceptional circumstances the Chairman or, in his absence, the Vice-Chairman,

may permit an officer to absent himself from the Committee meeting.

2. **Functions.**—The functions of the Committee will be to advise with regard to quick disposal of public grievances, to ensure that Government instructions for the early redressal of grievances are carried out and to undertake enquiries in special cases of undue delays.

At the district level, the Deputy Commissioner, who will function as District Grievances Officer, will entertain all complaints from the public. He will also entertain complaints from retired officials regarding their pension arrears, pay fixation etc. He will not entertain complaints from serving officials, but if any such complaints are received they will be brought to the notice of the Head of the Department, Secretary or the Minister as necessary.

3. **Jurisdiction.**—The jurisdiction of the District Level Committee will comprise of the whole district.

The Headquarter of the District Level Committee will be at District Headquarters.

4. **Payment of T.A. and D.A. to Members.**—The non-official members of Committee will be entitled to draw travelling allowance (Mileage and daily allowance) in respect of the journeys that may be performed by them in connection with the work assigned to the Committee as per annexure 'A'.

The Chief Secretary to the Government of Himachal Pradesh will be the Controlling Officer with regard to the countersigning of the travelling bills of the non-official members. The T.A. bills will be prepared by the Department of Personnel Secretariat Administration.

The expenditure will be debitable to Major Head "19—General Administration—C. Secretariat and Attached Offices, C—Civil Secretariat. C. I. (1) (B) Allowances".

This issues with the concurrence of the Finance Department obtained vide their diary No. 2192, dated 15th November, 1972.

This notification supersedes Grievances Committee or any other committee constituted on the subject at district level, if any.

#### ANNEXURE A

#### TRAVELLING ALLOWANCE AND DEARNESS ALLOWANCE OF NON-OFFICIAL MEMBERS OF THE HIMACHAL PRADESH GRIEVANCE COMMITTEE

##### (1) Travelling Allowance:

(i) **Journey by Rail.**—(a) **Member of Parliament.**—Members of Parliament will utilise the free first class railway pass issued to them as Members of Parliament in respect of all rail journeys undertaken by them on business of Committee. They will not travel by air-conditioned accommodation at Government expenses. If a Member of Parliament travels by air-conditioned coach, he will pay the difference between the fares for the air-conditioned and first class accommodation from his own pocket. They will be paid incidental charges at the rate of 8 paise per kilometre for each single journey performed by rail.

(b) **Non-official members other than members of Parliament.**—They will be treated at par with Government servants of the first grade, and will be entitled to a single fare of the class of the accommodation actually used, but not exceeding the fare to which the Government servants of the first grade are normally entitled, i.e. accommodation of the highest class, by whatever name it may be called provided on the railway by which the journey is performed excluding air-conditioned,

plus an allowance for incidental expenses at the rate of 35 paise per every 10 kilometre or part thereof, if the journey exceeds 5 kilometres.

(ii) **Journey by Road.**—In respect of journey by road between places not connected by rail a member will be entitled to road mileage admissible to an officer of the first grade under the rules and at the rates as applicable to the employees of the Himachal Pradesh Government.

In case where journey between two places connected by rail is performed by road, rail being the ordinary mode of travelling, the road mileage will be regulated as under:—

- (1) When a journey is performed by taking a single seat in a public conveyance, he will be entitled to actual fare paid for a seat on a public conveyance plus incidentals admissible as for journey by rail or the lower rate of road mileage limited to rail mileage, whichever is less.
- (2) When the journey is performed otherwise the higher rate of road mileage, but limited to rail mileage will apply.

**Note:**—Non-official members, who are also members of the Vidhan Sabha will be entitled to mileage at the same rate and on the same condition as are applicable to them as Member of Vidhan Sabha to attend the Session.

(2) **Daily Allowance.**—(i) The non-official members other than members of Vidhan Sabha will be entitled to daily allowance for each day of the meeting at the highest rate admissible to a Government servant of the first grade for the respective locality.

(ii) The Members of Vidhan Sabha will be entitled to a daily allowance for each day of meeting at the same rate and on the same condition as are applicable to them as Member Vidhan Sabha to attend the Session.

(3) In addition to the daily allowance for the day(s) of the meeting a member shall also be entitled to full daily allowance for the day preceding and/or the day following the meeting; if—

- (i) he arrives in the forenoon of the day preceding the day of the meeting or on an earlier day; and/or
- (ii) he departs at 12-noon or in the afternoon of the day following the day of the meeting or on a later day. But he will be entitled to only half daily allowance for the day preceding and/or for the day following the meeting if:—
  - (a) he arrives at 12-noon or in the afternoon of the day of the meeting or/and;
  - (b) he departs in the forenoon of the day following the day of the meeting.

(4) Daily allowance will be subject to the usual conditions laid down in Supplementary Rule 73 as amended from time to time.

(5) **Conveyance Allowance.**—A non-official member, resident at a place where the meeting of the Committee is held will not be entitled to travelling and daily allowances on the scales indicated above, but will be allowed only the actual cost of conveyance hire, subject to a maximum of Rs. 10.00 per day. Before the claim is actually paid the controlling officer should verify the claim and satisfy himself, after obtaining such details as may be considered necessary, that the actual expenditure was not less than the amount claimed. In cases he is not satisfied with the details, he may at his discretion limit the conveyance allowance to road mileage.

If such a member uses his own car, he will be granted mileage allowance at the rate admissible to officials of the first grade subject to maximum of Rs. 10.00 per day.

(6) The travelling and daily allowance will be admissible to a member on production of a certificate by him to the effect that he has not drawn any travelling or daily allowance for the same journey and halts from any other Government source.

(7) The non-official members will be eligible for travelling allowance for the journey actually performed in connection with the meetings of the Committee from and to the place of their permanent residence to be named in advance. If any member performs a journey from a place other than the place of his permanent residence to attend meeting of the Committee or return to a place other than the place of his permanent residence, after the termination of the meeting, travelling allowance shall be worked out on the basis of the distance actually travelled or the distance between the place of permanent residence and the venue of the meeting, whichever is less.

(8) The non-official members who are members of Vidhan Sabha will not be entitled to daily allowance in connection with his assignment, than the Vidhan Sabha or the Vidhan Sabha Committee on which the member is serving is in session, as they will be drawing their daily allowance under the Salaries and Allowances of Members of the Legislative Assembly (Himachal Pradesh) Act, 1963, from the Vidhan Sabha, however, if they certify that they were prevented from attending the Session of the House or the Vidhan Sabha Committee and did not draw any daily allowance from the Vidhan Sabha. They would be entitled to daily allowance at the rate as prescribed.

(9) In the case of over-payment made on account of T.A. to non-official member, the same will be recoverable under the provision of the relevant rules.

(10) The Members of Parliament and Vidhan Sabha Members will also not draw T.A. and D.A. including conveyance allowance which will disqualify them from the Parliament and the Vidhan Sabha.

*Simla-2, the 9th January, 1973*

No. 8-5/72-Vig. (Grv).—Consequent upon the re-organisation of districts, the Governor, Himachal Pradesh is pleased to constitute Himachal Pradesh Grievances Committee at the district level for Hamirpur, as under:—

1. Chief Parliamentary Secretary	Chairman
2. Deputy Commissioner, Hamirpur	Vice-Chairman
3. All Members of Parliament of the district	Member
4. All M.L.As. of the district	-do-
5. Superintendent of Police, Hamirpur	-do-
6. Chief Medical Officer, Hamirpur	-do-
7. S. E., P. W. D., Hamirpur	-do-
8. S. E., 3rd Hyd. Circle, Dharamsala	-do-
9. D. D. P. O., Hamirpur	-do-
10. Conservator of Forests, Dharamsala	-do-
11. S. E., P. W. D., Hamirpur	-do-
12. District Food and Supplies Officer, Hamirpur	-do-
13. District Industries Officer, Hamirpur	-do-
14. District Education Officer, Hamirpur	-do-
15. District Welfare Officer, Hamirpur	-do-
16. District Excise and Taxation Officer, Hamirpur	-do-

17. D. F. O., Hamirpur	Member
18. District Agriculture Officer, Hamirpur	-do-
19. District Animal Husbandry Officer, Hamirpur	-do-
20. Treasury Officer, Hamirpur	-do-
21. Regional Transport Officer, Hamirpur	-do-
22. D. P. R. O., Hamirpur	-do-
23. S. D. O. (C), Hamirpur	-do-
24. District Employment Officer, Hamirpur	-do-
25. G.A. to Deputy Commissioner, Hamirpur	Member-Secretary

Notes:—(i) In the absence of the Chairman, the Vice-Chairman will preside over the meeting of the District Committee.

(ii) The Deputy Commissioner will also be the District Grievances Officer and will be assisted by the General Assistant/S. D. O. (District Headquarters) in this respect.

(iii) For each district there will be a fixed date for holding the meeting of the Committee, and every officer who is a member of the Committee shall attend the meeting personally and regularly. In exceptional circumstances the Chairman or, in his absence the Vice-Chairman may permit an officer to absent himself from the Committee meeting.

2. *Functions.*—The functions of the Committee will be to advise with regard to quick disposal of public grievances, to ensure that Government instructions for the early redressal of grievances are carried out and to undertake enquiries in special cases of undue delays.

At the district level, the Deputy Commissioner who will function as District Grievances Officer, will entertain all complaints from the public. He will also entertain complaints from retired officials regarding their pension arrears, pay fixation etc. He will not entertain complaints from serving officials, but if any such complaints are received they will be brought to the notice of the Head of the Department, Secretary or the Minister as necessary.

3. *Jurisdiction.*—The jurisdiction of the District Level Committee will comprise of the whole district.

The Headquarter of the District Level Committee will be at District Headquarters.

4. *Payment of T.A. and D.A. to Members.*—The non-official members of Committee will be entitled to draw travelling allowance (Mileage and daily allowance in respect of the journeys that may be performed by them in connection with the work assigned to the Committee as per annexure 'A'.

The Chief Secretary to the Government of Himachal Pradesh will be the Controlling Officer with regard to the countersigning of the travelling bills of the non-official members. The T.A. bills will be prepared by the Department of Personnel Secretariat Administration.

The expenditure will be debitable to Major Head 19—General Administration. C. Secretariat and Attached Offices, C—Civil Secretariat. C. I. (1) (B) Allowances".

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This notification supersedes Grievances Committee or any other committee constituted on the subject at district level, if any.



ANNEXURE 'A'

T.A. AND D.A. OF NON-OFFICIAL MEMBERS OF THE HIMACHAL PRADESH GRIEVANCE COMMITTEE

(1) *Travelling Allowance:*

(i) *Journey by Rail.*—(a) *Member of Parliament.*—Members of Parliament will utilise the free first class railway pass issued to them as Members of Parliament in respect of all rail-journeys undertaken by them on business of Committee. They will not travel by air-conditioned accommodation at Government expenses. If a Member of Parliament travels by air-conditioned coach, he will pay the difference between the fares for the air-conditioned and first class accommodation from his own pocket. They will be paid incidental charges at the rate of 8 paise per kilometre for each single journey performed by rail.

(b) *Non-official Members other than Members of Parliament.*—They will be treated at par with Government servants of the first grade, and will be entitled to a single fare of the class of the accommodation actually used, but not exceeding the fare to which the Government servants of the first grade are normally entitled, i.e. accommodation of the highest class, by whatever name it may be called provided off the railway by which the journey is performed excluding air-conditioned, plus an allowance for incidental expenses at the rate of 35 paise per every 10 kilometre or part thereof, if the journey exceeds 5 kilometres.

(ii) *Journey by Road.*—In respect of journey by road between places not connected by rail a member will be entitled to road mileage admissible to an officer of the first grade under the rules and at the rates as applicable to the employees of the Himachal Pradesh Government.

In case where journey between two places connected by rail is performed by road, rail being the ordinary mode of travelling, the road mileage will be regulated as under:—

- (1) When a journey is performed by taking a single seat in a public conveyance, he will be entitled to actual fare paid for a seat in a public conveyance plus incidentals admissible as for journey by rail or the lower rate of road mileage limited to rail mileage, whichever is less.
- (2) When the journey is performed otherwise the higher rate of road mileage, but limited to rail mileage will apply.

*Note.*—Non-official members, who are also members of the Vidhan Sabha will be entitled to mileage at the same rate and on the same condition as are applicable to them as Member of Vidhan Sabha to attend the Session.

(2) *Daily Allowance.*—(i) The non-official members other than members of Vidhan Sabha will be entitled to daily allowance for each day of the meeting at the highest rate admissible to a Government servant of the first grade for the respective locality.

(ii) The Members of Vidhan Sabha will be entitled to a daily allowance for each day of meeting at the same rate and on the same condition as are applicable to them as Member Vidhan Sabha to attend the Session.

(3) In addition to the daily allowance for the day(s) of the meeting a member shall also be entitled to full daily allowance for the day preceding and/or the day following the meeting if:—

- (i) he arrives in the forenoon of the day preceding

the day of the meeting or on an earlier day; and/or

- (ii) he departs at 12-noon or in the afternoon of the day following the day of the meeting or on a later day. But he will be entitled to only half daily allowance for the day preceding and/or for the day following the meeting if:—

- (a) he arrives at 12-noon or in the afternoon of the day of the meeting; and/or

- (b) he departs in the forenoon of the day following the day of the meeting.

(4) Daily allowance will be subject to the usual conditions laid down in Supplementary Rule 73 as amended from time to time.

(5) *Conveyance Allowance.*—A non-official member, resident at a place where the meeting of the Committee is held will not be entitled to travelling and daily allowances on the scales indicated above, but will be allowed only the actual cost of conveyance hire, subject to a maximum of Rs. 10.00 per day. Before the claim is actually paid the controlling officer should verify the claim and satisfy himself, after obtaining such details as may be considered necessary, that the actual expenditure was not less than the amount claimed. In cases he is not satisfied with the details, he may at this discretion limit the conveyance allowance to road mileage.

If such a member uses his own car, he will be granted mileage allowance at the rate admissible to officials of the first grade subject to maximum of Rs. 10.00 per day.

(6) The travelling and daily allowance will be admissible to a member on production of a certificate by him to the effect that he has not drawn any travelling or daily allowance for the same journey and halts from any other Government source.

(7) The non-official members will be eligible for travelling allowance for the journey actually performed in connection with the meetings of the Committee from and to the place of their permanent residence to be named in advance. If any member performs a journey from a place other than the place of his permanent residence to attend meeting of the Committee of return to a place other than the place of his permanent residence, after the termination of the meeting, travelling allowance shall be worked out on the basis of the distance actually travelled or the distance between the place of permanent residence and the venue of the meeting, whichever is less.

(8) The non-official members who are members of Vidhan Sabha will not be entitled to daily allowance in connection with his assignment, than the Vidhan Sabha or the Vidhan Sabha Committee on which the member is serving is in session, as they will be drawing their daily allowance under the Salaries and Allowances of Members of the Legislative Assembly (Himachal Pradesh) Act, 1963, from the Vidhan Sabha, however, if they certify that they were prevented from attending the Session of the House or the Vidhan Sabha Committee and did not draw any daily allowance from the Vidhan Sabha. They would be entitled to daily allowance at the rate as prescribed.

(9) In the case of over-payment made on account of T.A. to non-official member, the same will be recoverable under the provision of the relevant rules.

The Members of Parliament and Vidhan Sabha Members will also not draw T.A. and D.A. including conveyance allowance which will disqualify them from the Parliament and the Vidhan Sabha.

Simla-2, the 9th January, 1973

No. 8-5/72-Vig. (Grv.).—Consequent upon the re-organisation of districts, the Governor, Himachal Pradesh is pleased to constitute Himachal Pradesh Grievances Committee at district level for Solan, as under:—

1. Deputy Speaker, Himachal Pradesh Legislative Assembly.	Chairman
2. Deputy Commissioner, Solan	Vice-Chairman
3. All Members of Parliament of the district	Member
4. All M.L.As. of the district	-do-
5. Superintendent of Police, Solan	-do-
6. S.E., H.P. P.W.D., Solan	-do-
7. S.E., Electrical Circle, Solan	-do-
8. Conservator of Forests, Solan	-do-
9. Chief Medical Officer, Solan	-do-
10. D.F.O., Solan	-do-
11. District Food and Supplies Officer, Solan	-do-
12. XEN, P.W.D., Kasauli Division	-do-
13. SEN, National Highway Division, Simla	-do-
14. District Animal Husbandry Officer, Solan	-do-
15. District Agriculture Officer, Solan	-do-
16. District Education Officer, Solan	-do-
17. District Employment Officer, Solan	-do-
18. District Excise and Taxation Officer, Solan	-do-
19. District Industries Officer, Solan	-do-
20. District Co-op. and Supplies Officer, Solan	-do-
21. Treasury Officer, Solan	-do-
22. D.P.R.O., Solan	-do-
23. District Statistical Officer, Solan	-do-
24. Regional Manager, HGT of the area, Solan	-do-
25. SEN, Electricity, Solan	-do-
26. All S.D.O.s(C)/S.D.Ms. of the district	-do-
27. D.F.O., Kuniyar	-do-
28. Land Acquisition Officer, Solan	-do-
29. XEN Electricity, Una	-do-
30. XEN Irrigation Division, Bilaspur	-do-
31. G.A. to D.C., Solan	Member Secretary.

Notes.—(i) In the absence of the Chairman, the Vice-Chairman will preside over the meeting of the District Committee.

(ii) The Deputy Commissioner will also be the District Grievances Officer and will be assisted by the General Assistant/S.D.O. (District Headquarters) in this respect.

(iii) For each district there will be a fixed date for holding the meeting of the Committee, and every officer who is a member of the Committee shall attend the meeting personally and regularly. In exceptional circumstances the Chairman or, in his absence, the Vice-Chairman may permit an officer to absent himself from the Committee meeting.

2. Functions. The functions of the Committee will be to advise with regard to quick disposal of public grievances, to ensure that Government instructions for the early redressal of grievances are carried out and to undertake enquiries in special cases of undue delays.

At the district level, the Deputy Commissioner who will function as District Grievances Officer, will entertain all complaints from the public. He will also entertain complaints from retired officials regarding their pension arrears, pay fixation etc. He will not entertain complaints from serving officials, but if any such complaints are received they will be brought to the notice of the

Head of the Department, Secretary or the Minister as necessary.

3. Jurisdiction.—The jurisdiction of the District Level Committee will comprise of the whole district.

The Headquarter of the District Level Committee will be at District Headquarters.

4. Payment of T.A. and D.A. to Members.—The non-official members of Committee will be entitled to draw travelling allowance Mileage and daily allowance in respect of the journey that may be performed by them in connection with the work assigned to the Committee as per annexure 'A'.

The Chief Secretary to the Government of Himachal Pradesh will be the controlling officer with regard to the countersigning of the travelling bills of the non official members. The T. A. bills will be prepared by the Department of Personnel Secretariat Administration.

The expenditure will be debitable to Major Head "19—General Administration. C—Secretariat and Attached Offices, C—Civil Secretariat, C.I. (1) (B) Allowances".

This issues with the concurrence of the Finance Department obtained vide their diary No. 2192 dated 15-11-72.

This notification supersedes Grievances Committee or any other committee constituted on the subject at district level, if any.

#### ANNEXURE A

#### T.A. AND D.A. OF NON-OFFICIAL MEMBERS OF THE HIMACHAL PRADESH GRIEVANCE COMMITTEE.

##### travelling Allowance

(i) Journey by Rail.—(a) Member of Parliament.—Members of Parliament will utilise the free first class railway pass issued to them as Members of Parliament in respect of all rail journeys undertaken by them on business of Committee. They will not travel by air-conditioned accommodation at Government expenses. If a Member of Parliament travels by air-conditioned coach, he will pay the difference between the fares for the air-conditioned and first class accommodation from his own pocket. They will be paid incidental charges at the rate of 8 paise per kilometre for each single journey performed by rail.

(b) Non-official members other than Members of Parliament.—They will be treated at par with Government servants of the first grade, and will be entitled to a single fare of the class of the accommodation actually used, but not exceeding the fare to which the Government servants of the first grade are normally entitled, i.e. accommodation of the highest class, by whatever name it may be called provided on the railway by which the journey is performed excluding air-conditioned, plus an allowance for incidental expenses at the rate of 35 paise per every 10 kilometre or part thereof, if the journey exceeds 5 kilometres.

(ii) Journey by Road.—In respect of journey by road between places not connected by rail a member will be entitled to road mileage admissible to an officer of the first grade under the rules and at the rates as applicable to the employees of the Himachal Pradesh Government.

In case where journey between two places connected by rail is performed by road, rail being the ordinary mode of travelling, the road mileage will be regulated as under:—

(1) When a journey is performed by taking a single

seat in a public conveyance, he will be entitled to actual fare paid for a seat in a public conveyance plus incidentals admissible as for journey by rail or the lower rate of road mileage limited to rail mileage, whichever is less.

- (2) When the journey is performed otherwise the higher rate of road mileage, but limited to rail mileage will apply.

**Note.**—Non-official members, who are also members of the Vidhan Sabha will be entitled to mileage at the same rate and on the same condition, as are applicable to them as Member of Vidhan Sabha to attend the Session.

(2) **Daily Allowance.**—(i) The non-official members other than members of Vidhan Sabha will be entitled to daily allowance for each day of the meeting at the highest rate admissible to a Government servant of the first grade for the respective locality.

(ii) The Members of Vidhan Sabha will be entitled to a daily allowance for each day of meeting at the same rate and on the same condition as are applicable to them as Member Vidhan Sabha to attend the Session.

(3) In addition to the daily allowance for the day(s) of the meeting a member shall also be entitled to full daily allowance for the day preceding and/or the day following the meeting if:—

(i) he arrives in the forenoon of the day preceding the day of the meeting or on an earlier day; and/or

(ii) he departs at 12-noon or in the afternoon of the day following the day of the meeting or on a later day. But he will be entitled to only half daily allowance for the day preceding and/or for the day following the meeting if:—

(a) he arrives at 12-noon or in the afternoon of the day of the meeting, and/or

(b) he departs in the forenoon of the day following the day of the meeting.

(4) Daily allowance will be subject to the usual conditions laid down in Supplementary Rule 73 as amended from time to time.

(5) **Conveyance Allowance.**—A non-official member, resident at a place where the meeting of the Committee is held will not be entitled to travelling and daily allowances on the scales indicated above, but will be allowed only the actual cost of conveyance hire, subject to a maximum of Rs. 10.00 per day. Before the claim is actually paid the controlling officer should verify the claim and satisfy himself, after obtaining such details as may be considered necessary, that the actual expenditure was not less than the amount claimed. In cases he is not satisfied with the details, he may at his discretion limit the conveyance allowance to road mileage.

If such a member uses his own car, he will be granted mileage allowance at the rate admissible to officials of the first grade subject to maximum of Rs. 10.00 per day.

(6) The travelling and daily allowance will be admissible to a member on production of a certificate by him to the effect that he has not drawn any travelling or daily allowance for the same journey and halts from any other Government source.

(7) The non-official members will be eligible for travelling allowance for the journey actually performed in connection with the meetings of the Committee from and to the place of their permanent residence to be named in advance. If any member performs a journey from a

place other than the place of his permanent residence to attend meeting of the Committee or return to a place other than the place of his permanent residence, after the termination of the meeting, travelling allowance shall be worked out on the basis of the distance actually travelled or the distance between the place of permanent residence and the venue of the meeting, whichever is less.

(8) The non-official members who are members of Vidhan Sabha will not be entitled to daily allowance in connection with his assignment, than the Vidhan Sabha or the Vidhan Sabha Committee on which the member is serving is in session, as they will be drawing their daily allowance under the Salaries and Allowances of Members of the Legislative Assembly (Himachal Pradesh) Act, 1963, from the Vidhan Sabha, however, if they certify that they were prevented from attending the Session of the House or the Vidhan Sabha Committee and did not draw any allowance from the Vidhan Sabha. They would be entitled to daily allowance at the rate as prescribed.

(9) In the case of over-payment made on account of T.A. to non-official member, the same will be recoverable under the provision of the relevant rules.

(10) The Members of Parliament and Vidhan Sabha Members will also not draw T.A. and D. A. including conveyance allowance which will disqualify them from the Parliament and the Vidhan Sabha.

#### *Simla-2, the 9th January, 1973*

**No. 8-5/72-Vig. (Grv.).**—In supersession of this Government notification No. 3-2/71-GAD, dated the 7th September, 1972 and subsequent modification dated the 23rd June, 1972, the Governor, Himachal Pradesh is pleased to reconstitute Himachal Pradesh Grievances Committee at district level for Simla district as under:—

1. P.W.D. Minister	Chairman
2. Deputy Commissioner	Vice-Chairman
3. All M.Ps. of the district	Member
4. All M.L.As., of the district	-do-
5. Supdt. of Police, Simla	-do-
6. Superintending Engineer II Circle, H.P., P.W.D., Simla.	-do-
7. S.E. Irrigation, Simla	-do-
8. Conservator of Forests, Simla Circle	-do-
9. Conservator of Forests, Nahan Circle	-do-
10. Conservator of Forests, Working Plan, Simla.	-do-
11. Conservator of Forests Dev. Circle	-do-
12. S.D.O. (C) Rampur	-do-
13. S.D.O. Rohru	-do-
14. S.D.O. Theog	-do-
15. S.D.O. Chopal	-do-
16. S.D.O. Simla	-do-
17. S.E. and P.O., Simla	-do-
18. XEN P.W.D. Rampur	-do-
19. XEN P.W.D. Simla Div. No. 1.	-do-
20. XEN P.W.D. Simla Div. No. 2.	-do-
21. XEN P.W.D. Karsog	-do-
22. XEN P.W.D. Provincial Div., Simla	-do-
23. XEN P.W.D. National Highway, Simla	-do-
24. XEN P.W.D. Electricity, Simla	-do-
25. XEN P.W.D. Kumarsain	-do-
26. XEN P.W.D. Jubbal	-do-
27. S.D.O. Investigation and Designs, Dhalli	-do-
28. D.F.O. Chopal	-do-
29. D.F.O. Simla	-do-
30. D.F.O. Rohru	-do-

31. D.F.O. Kotgarh	Member
32. D.F.O. Timber Extraction Div., Sawra	-do-
33. D.F.O. Working Plan, Rohru	-do-
34. Wild Life Warden, Simla	-do-
35. Land Acquisition Officer, Simla	-do-
36. Chief Medical Officer, Simla	-do-
37. District Industries Officer, Simla	-do-
38. Regional Transport Officer, Dhalli	-do-
39. District Welfare Officer, Simla	-do-
40. D.C. & S.O., Simla	-do-
41. Horticulture Development Officer, Simla	-do-
42. Excise and Taxation Officer, Simla	-do-
43. District Animal Husbandry Officer, Simla	-do-
44. Deputy Director of Soil Conservation, Simla	-do-
45. SEN Electricity, Rampur	-do-
46. District Employment Officer, Simla	-do-
47. District Education Officer, Simla	-do-
48. District Agriculture Officer, Simla	-do-
49. D.P.R.O. Simla	-do-
50. District Statistical Officer, Simla	-do-
51. Regional Potato Development Officer, Simla	-do-
52. Potato Development Officer, Naubahar	-do-
53. Treasury Officer, Simla	-do-
54. Administrator Municipal Corp., Simla	-do-
55. District Horticultural Officer, Simla	-do-
56. G.A. to D.C. Simla	Member-Secretary.

The Himachal Pradesh Grievances Committee at District Level for Mahasu district constituted vide this Government notification No. 3-2/71-GAD, dated the 7th September, 1972 is hereby superseded.

Notes:—(i) In the absence of the Chairman, the Vice-Chairman will preside over the meeting of the District Committee.

(ii) The Deputy Commissioner will also be the District Grievances Officer and will be assisted by the General Assistant/S.D.O. (District Headquarters) in this respect.

(iii) For each district there will be a fixed date for holding the meeting of the Committee, and every officer who is a member of the Committee shall attend the meeting personally and regularly. In exceptional circumstances the Chairman or, in his absence, the Vice-Chairman may permit an officer to absent himself from the Committee meeting.

2. *Functions.* The functions of the Committee will be to advise with regard to quick disposal of public grievances, to ensure that Government instructions for the early redressal of grievances are carried out and to undertake enquiries in special cases of undue delays.

At the district level, the Deputy Commissioner who will function as District Grievances Officer, will entertain all complaints from the public. He will also entertain complained from retired officials regarding their pension arrears, pay fixation etc. He will not entertain complaints from serving officials, but if any such complaints are received they will be brought to the notice of the Head of the Department, Secretary or the Minister as necessary.

3. *Jurisdiction.*—The jurisdiction of the District Level Committee will comprise of the whole district.

The Headquarter of the District Level Committee will be at District Headquarters.

4. *Payment of T.A. and D.A. to Members.*—The non-official members of Committee will be entitled to draw

travelling allowance Mileage and daily allowance) in respect of the journeys that may be performed by them in connection with the work assigned to the Committee as per annexure 'A'.

The Chief Secretary to the Government of Himachal Pradesh will be the controlling officer with regard to the countersigning of the travelling bills of the non-official members. The T.A. bills will be prepared by the Department of Personnel Secretariat Administration.

The expenditure will be debitable to Major Head "19—General Administration. C—Secretariat and Attached Offices. C—Civil Secretariat. C. 1. (1) (B) Allowances".

This issues with the concurrence of the Finance Department obtained vide their diary No. 2192, dated 15-11-72.

This notification supersedes Grievances Committee or any other committee constituted on the subject at district level, if any.

#### ANNEXURE 'A'

#### T.A. AND D.A. OF NON-OFFICIAL MEMBERS OF THE HIMACHAL PRADESH GRIEVANCE COMMITTEE.

##### (1) Travelling Allowance:

(i) *Journey by Rail.*—(a) *Member of Parliament.*—Members of Parliament will utilise the free first class railway pass issued to them as Members of Parliament in respect of all rail journeys undertaken by them on business of Committee. They will not travel by air-conditioned accommodation at Government expenses. If a Member of Parliament travels by air-conditioned coach, he will pay the difference between the fares for the air-conditioned and first class accommodation from his own pocket. They will be paid incidental charges at the rate of 8 paise per kilometre for each single journey performed by rail.

(b) *Non-official members other than Members of Parliament.*—They will be treated at par with Government servants of the first grade, and will be entitled to a single fare of the class of the accommodation actually used, but not exceeding the fare to which the Government servants of the first grade are normally entitled, i.e. accommodation of the highest class, by what ever name it may be called provided on the railway by which the journey is performed excluding air-conditioned, plus an allowance for incidental expenses at the rate of 35 paise per every 10 kilometre or part thereof, if the journey exceeds 5 kilometres.

(ii) *Journey by Road.*—In respect of journey by road between places not connected by rail a member will be entitled to road mileage admissible to an officer of the first grade under the rules and at the rates as applicable to the employees of the Himachal Pradesh Government.

In case where journey between two places connected by rail is performed by road, rail being the ordinary mode of travelling, the road mileage will be regulated as under:—

(1) When a journey is performed by taking a single seat in a public conveyance, he will be entitled to actual fare paid for a seat in a public conveyance plus incidentals admissible as for journey by rail or the lower rate of road mileage limited to rail mileage, whichever is less.

(2) When the journey is performed otherwise the higher rate of road mileage, but limited to rail mileage will apply.



**Note:** Non-official members, who are also members of the Vidhan Sabha will be entitled to Mileage at the same rate and on the same condition as are applicable to them as Member of Vidhan Sabha to attend the Session.

(2) **Daily Allowance.**—(i) The Non-official members other than members of Vidhan Sabha will be entitled to daily allowance for each day of the meeting at the highest rate admissible to a Government servant of the First Grade for the respective locality.

(ii) The members of Vidhan Sabha will be entitled to a daily allowance for each day of meeting at the same rate and on the same condition as are applicable to them as Member Vidhan Sabha to attend the Session.

(3) In addition to the daily allowance for the day(s) of the meeting a member shall also be entitled to full daily allowance for the day preceding and/or the day following the meeting if:—

(i) he arrives in the forenoon of the day preceding the day of the meeting or on an earlier day; and/or

(ii) he departs at 12-noon or in the afternoon of the day following the day of the meeting or on a later day. But he will be entitled to only half daily allowance for the day preceding and/or for the day following the meeting if—

(a) he arrives at 12-noon or in the afternoon of the day of the meeting, and/or

(b) he departs in the forenoon of the day following the day of the meeting.

(4) Daily allowance will be subject to the usual conditions laid down in Supplementary Rule 73 as amended from time to time.

5. **Conveyance allowance.**—A non-official member, resident at a place where the meeting of the Committee is held will not be entitled to travelling and daily allowances on the scales indicated above, but will be allowed only the actual cost of conveyance hire, subject to a maximum of Rs. 10.00 per day. Before the claim is actually paid the controlling officer should verify the claim and satisfy himself after obtaining such details as may be considered necessary, that the actual expenditure was not less than the amount claimed. In cases he is not satisfied with the details, he may at his discretion limit the conveyance allowance to road mileage.

If such a member uses his own car, he will be granted mileage allowance at the rate admissible to officials of the First Grade subject to maximum of Rs. 10.00 per day.

(6) The Travelling and Daily allowance will be admissible to a member on production of a certificate by him to the effect that he has not drawn any travelling or daily allowance for the same journey and halts from any other Government source.

(7) The non-official members will be eligible for travelling allowance for the journey actually performed in connection with the meetings of the Committee from and to the place of their permanent residence to be named in advance. If any member performs a journey from a place other than the place of his permanent residence to attend meeting of the Committee or return to a place other than the place of his permanent residence, after the termination of the meeting, travelling allowance shall be worked out on the basis of the distance actually travelled or the distance between the place of permanent residence and the venue of the meeting, whichever is less.

(8) The non-official members who are members of

Vidhan Sabha will not be entitled to daily allowance in connection with his assignment, than the Vidhan Sabha or the Vidhan Sabha Committee on which the member is serving is in session, as they will be drawing their daily allowance under the Salaries and Allowance of Members of the Legislative Assembly (Himachal Pradesh) Act, 1963, from the Vidhan Sabha. However, if they certify that they were prevented from attending the Session of the House or the Vidhan Sabha Committee and did not draw any daily allowance from the Vidhan Sabha. They would be entitled to daily allowance at the rate as prescribed.

(9) In the case of over-payment made on account of T.A. to non-official member, the same will be recoverable under the provision of the relevant rules.

(10) The Members of Parliament and Vidhan Sabha Members will also not draw T.A. and D.A. including conveyance allowance which will disqualify them from the Parliament and the Vidhan Sabha.

By order,  
K. N. CHANNA,  
Chief Secretary.

### COMMUNITY DEVELOPMENT DEPARTMENT NOTIFICATION

Simla-4, the 22nd January, 1973

No. 4-173/61-E. Dev.—The Governor, Himachal Pradesh is pleased to allow Shri A. R. Sharma, Block Development Officer, Una to cross the E/B at the stage of Rs. 590 in the pay-scale of Rs. 350-25-500-30-590/30-800 thereby raising his pay to Rs. 620 P.M. with effect from the 28th September, 1971.

GANGESH MISRA,  
Secretary.

### EDUCATION DEPARTMENT NOTIFICATION

Simla, the 17th January, 1973

No. 6-37/71-Sectt. Edu.—Whereas it appears to the Governor, Himachal Pradesh that the land is required by the Government at the public expense for a public purpose, namely for the construction of Himachal Pradesh University buildings, it is hereby declared that the land described in the specification below is required for the above purpose.

2. This declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Land Acquisition Simla is hereby directed to take order for the acquisition of said land.

3. Plans of the land may be inspected in the office of the Collector, Land Acquisition, Simla.

#### SPECIFICATION

District: SIMLA			Tehsil: SIMLA	
Village	Khewat No.	Khasra No.	Area Big. Bis.	
BAG	3	29, 33, 39, 40, 43, 46, 48, 50, 53, 36, 37, 28, 30, 31, 32, 34, 35, 38, 41, 42, 44, 45, 47, 49, 51 and 52 (26 fields).	45	19

By order,  
PRAD KASH CHAND,  
Secretary.



**FOREST DEPARTMENT  
CORRIGENDUM**

Simla-2, the 22nd January, 1973

No. 4-4/71-SP.—Please substitute the words "Simla District" for the words "Mahasu District, Kasumpti" appearing in the Government of Himachal Pradesh notification of even number, dated the 9th November, 1972.

By order,  
P. R. MATTOO,  
Secretary.

**GENERAL ADMINISTRATION DEPARTMENT (A)  
OFFICE ORDER**

Simla-2, the 22nd January, 1973

No. 16-50/72-GA-A.—It has been decided that 25th 1973 (Thursday), corresponding to Magha 5, 1894 (Saka), will be observed as a public holiday on account of celebration of Anniversary of the Indauguration of State of Himachal Pradesh, in the public offices under the Himachal Pradesh Government, throughout the Pradesh.

2. It will also be a holiday under section 25 of the Negotiable Instruments Act, 1881.

K. N. CHANNA,  
Chief Secretary.

**HOME DEPARTMENT  
NOTIFICATION**

Simla-2, the 17th January, 1973

No. 4-1/72-Home. (A).—Whereas it appears to the Governor, of Himachal Pradesh, that land is likely to be required to be taken by the Himachal Pradesh State Government at the public expenses for public purpose, namely for the construction of District Police Lines, Kulu with family Quarters at Bashing, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.

2. This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, as applied to Himachal Pradesh to all whom it may concern.

3. In exercise of the powers conferred by the aforesaid section, the Governor, Himachal Pradesh is pleased to authorise the officers for the time being engaged in undertaking, with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

4. Any person interested who has any objection to the acquisition of any land in the locality may within thirty days of the publication of this notification file an objection in writing before the Collector, Land Acquisition Kulu, District Kulu.

**SPECIFICATION**

District: KULU

Tehsil: KULU

Village or Revenue Estate	Khasra No.	Area Big. Bis.
PHATI BENOGI	3908	1 13
PHATI BENOGI	Rights of cutting grass and grazing in Phati No. 1 of Phati Benogi relating Revenue Settlement 1947-48	11 18

By order,  
K. N. CHANNA,  
Chief Secretary.

**INDUSTRIES DEPARTMENT  
NOTIFICATION**

Simla-2, the 6th November, 1972

No. 17-78/72-SI.—The Governor of Himachal Pradesh is pleased to prescribe and notify for the general information Lease Deed Form given in the Schedule of this notification for leasing out plots in the Industrial Areas, approved by the Government of Himachal Pradesh.

By order,  
P. K. MATTOO,  
Secretary.

**LEASE DEED**

This Indenture made this.....day of.....one thousand nine hundred and.....between the Governor of Himachal Pradesh (hereinafter called "the Lessor") of the one part and.....(hereinafter called the "Lessee") of the second part.

Whereas the Lessee has applied the Lessor for the grant of a lease of the plot of land, belonging to the Lessor, hereinafter described and the Lessor has on the faith of the statements and representations made by the Lessee accepted such application and has agreed to demise the said plot to the Lessee in the manner hereinafter appearing.

Now this Indenture witnesseth that, in consideration of the payment of a premium as well as the rent the amount of which shall be determined by the Lessor and which the Lessee hereby agrees to pay within fifteen days of demand by the Lessor, and of the covenants on the part of the Lessee hereinafter contained, the Lessor doth hereby demise unto the Lessee all that plot of land being the industrial plot No.....Block No.....in the layout plant of.....

containing by admeasurement an area of.....

or thereabouts situate at.....

which industrial plot is more particularly described in the Schedule hereunder written and with boundaries thereof for greater clearness has been delineated on the plan annexed to these presents and thereon coloured red (hereinafter referred to as the industrial plot) together with all rights, easements and appurtenances whatsoever to the said industrial plot belonging or appertaining to hold the premises hereby demised unto the Lessee from.....day of.....one thousand nine hundred and.....yielding and paying therefor rent as hereinafter mentioned.

Subject always to the exceptions, reservations, covenants and conditions hereinafter contained, that is to say:—

1. The Lessor excepts and reserves unto himself all mines, minerals, coals, gold-washing, earth, oil and quarries in or under the industrial plot and full right and power at all times to do all acts and things which may be necessary or expedient for the purpose of searching, for working, obtaining, removing and enjoying the same without providing or leaving any vertical support for the surface of the industrial plot or for any building for the time being standing thereon provided always

that the Lessor shall make reasonable compensation to the Lessee for all damage directly occasioned by the exercise of the rights hereby reserved or any of them.

2. The Lessee for himself, his heirs, executors, administrators and assigns, covenants with the Lessor in the manner following, that is to say:—

- (i) The Lessee shall pay within such time such additional sum or sums towards premium as may be decided upon by the Lessor on account of the compensation awarded by the Land Acquisition Collector being enhanced on reference or in appeal or both and the decision of the Lessor in this behalf shall be final and binding on the Lessee.
- (ii) The Lessee shall pay unto the Lessor the yearly rent hereby reserved on the days and in the manner herein appointed.
- (iii) The Lessee shall not deviate in any manner from the layout plan nor alter the size of the industrial plot whether by sub-division, amalgamation or otherwise.
- (iv) The Lessee shall, within a period of two years from the ..... day of ..... one thousand nine hundred ..... (and the time so specified shall be of the essence of the contract) after obtaining sanction to the building plan, with necessary designs, plans and specification from the Lessor or other authority specified by the Lessor, at his own expense, erect (upon the industrial plot and complete in a substantial and workmanlike manner an industrial building for carrying) on the approved manufacturing process or industry with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan and to the satisfaction of and in accordance with the rules and bye-laws of municipal or other authority.
- (v) (a) The Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the Industrial plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion:

Provided that such consent shall not be given for a period of ten years from the commencement of this lease unless, in the opinion of the Lessor, exceptional circumstances exist for the grant of such consent:

Provided further that, in the event of the consent being given the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e., the difference between the premium paid and the market value) of the industrial plot at the time of sale, transfer, assignment, or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding:

Provided further that the Lessor shall have the pre-emptive right to purchase the property after deducting fifty per cent of the un-earned increase as aforesaid.

(b) Notwithstanding anything contained in sub-clause (a) above, the Lessee may, with the previous consent in writing of the Lessor, mortgage or charge the

industrial plot to such person as may be approved by the Lessor in his absolute discretion:

Provided that, in the event of the sale or fore-closure of the mortgaged or charged property, the Lessor shall be entitled to claim and recover the fifty per cent of the unearned increase in the value of the industrial plot as aforesaid, and the amount of the Lessor's share of the said unearned increase, shall be a first charge, having priority over the said mortgage or charge. The decision of the Lessor in respect of the market value of the said industrial plot shall be final and binding on all parties concerned:

Provided further that the Lessor shall have the pre-emptive right to purchase the mortgaged or charged property after deducting fifty per cent of the un-earned increase as aforesaid.

- (vi) The Lessor's right to recover fifty per cent of the unearned increase and the pre-emptive right to purchase the property as mentioned hereinbefore shall apply equally to an involuntary sale or transfer whether it be by or through an executing or insolvency court.
- (vii) whenever the title of the Lessee in the industrial plot is transferred in any manner whatsoever, the transferee shall be bound by all the covenants and conditions contained herein and be answerable in all respects therefor.
- (viii) whenever the title of the Lessee in the industrial plot is transferred in any manner whatsoever, the transferor and the transferee shall within three months of the transfer, give notice of such transfer in writing to the Lessor.

In the event of the death of the Lessee the person on whom the title of the deceased devolves shall, within three months of the devolution give notice of such devolution to the Lessor.

The transferee or the person on whom the title devolves, as the case may be, shall supply the Lessor certified copies of the documents evidencing the transfer or devolution.

- (ix) The Lessee shall from time to time and at all times pay and discharge all rates, taxes, charges and assessments of every description which are now or may at any time hereafter during the continuance of this Lease be assessed, charged or imposed upon the industrial plot hereby demised or on any buildings to be erected thereupon or on the landlord or tenant in respect thereof.
- (x) All arrears of rent and other payments due in respect of the industrial plot hereby demised shall be recoverable in the same manner as arrears of land revenue.
- (vi) The Lessee shall in all respects comply with and be bound by the building, drainage and other bye-laws of the proper municipal or other authority for the time being in force.
- (xii) The Lessee shall not without sanction or permission in writing of the Lessor or other authority prescribed by the Lessor erect any building or make any alteration or addition to such building on the Industrial plot.
- (xiii) The Lessee shall not without the written consent of the Lessor use, or permit to be used, the industrial plot or any building thereon for residence or for carrying on any trade

or business whatsoever or use the same or permit the same to be used for any purpose other than that of carrying on them manufacturing process or running the industry of... or such other manufacturing process or industry as may be approved from time to time by the Lessor or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lessor may be a nuisance, annoyance or disturbance to the Lessor and persons living in the neighbourhood:

Provided that, if the Lessee is desirous of using the said industrial plot or the building thereon for a purpose other than that of the manufacturing process or industry as may be approved from time to time, the Lessor may allow such change of use on such terms and conditions, including payment of additional premium and additional rent, as the Lessor may in his absolute discretion determine.

(xiv) The Lessee shall on the termination of this lease peaceably yield up the industrial plot and the buildings thereon unto Lessor, if not renewed by the Lessor.

3. If the sum or sums payable towards the premium or the yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for one calendar month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this lease has been obtained by suppression of any fact or by any mis-statement, mis-representation or fraud or if there shall have been, in the opinion of the Lessor, whose decision shall be final, any breach by the Lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed or performed, then and in any such case, it shall be lawful for the Lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the industrial plot hereby demised and the buildings thereon, to re-enter upon and take possession of the industrial plot and the buildings and fixtures thereon, and thereupon this lease and everything herein contained shall cease and determine and the Lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him:

Provided that, notwithstanding anything contained herein to the contrary, the Lessor may without prejudice to his right of re-entry as aforesaid, in his absolute discretion, waive or condone breaches temporarily or otherwise, on receipt of such amount and on such terms and conditions as may be determined by him and may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum.

4. No forfeiture or re-entry shall be affected until the Lessor has served on the Lessee a notice in writing—

(a) specifying the particular breach complained of, and

(b) if the breach is capable of remedy, requiring the Lessee to remedy the breach,

and the Lessee fails within such reasonable time as may be mentioned in the notice to remedy the breach if it is capable of remedy; and in the event of forfeiture or re-entry the Lessor may, in his discretion, relieve against forfeiture on such terms and conditions as he thinks proper.

Nothing in this clause shall apply to forfeiture or re-entry—

- (a) for breach of covenants and conditions relating to sub-division or amalgamation, erection and completion of building within the time provided and transfer of the industrial plot as mentioned in clause 2, or
  - (b) in case this lease has been obtained by suppression of any fact, mis-statement, mis-representation or fraud.
5. (a) to hold the industrial plot unto the Lessee for the term of 99 years commencing from..... paying therefor the annual rent as may be determined by the Lessor. The rent for the first year shall be paid by the Lessee within fifteen days of the receipt of notice of demand to that effect from the Lessor, and for each subsequent year it shall be payable in advance (proportionate part of the said rent will be payable for the fraction of a year) in the manner as may be prescribed by the Lessor.

The rent so revised in the 61st year shall hold good for the remaining period of the lease. The rent shall be payable annually in advance on the 1st April, of each year (proportionate part of the said rent shall be payable for the fraction a year).

*Explanation.*—The revision of the rent shall become due from the 31st and 61st year but the actual revision may be done at any time after the expiry of the 30th year and before the commencement of the 34th year and after the expiry of the 60th year and before the commencement of the 64th year, as the case may be.

6. The Lessee doth agree that the burden of the covenants may run with the industrial plot and may bind any permitted assignee thereof, hereby covenants with the Lessor as follows:—

(i) That he will during the term of the lease hereby granted pay at the office of the Lessor or at such other place or places as the Lessor may from time to time appoint in this behalf the said rent on the days and in the manner hereinbefore appointed for the payment thereof.

(ii) That he will erect upon the industrial plot in a substantial and workmanlike manner, and at all times during the term of the lease maintain thereon a good and substantial building, equipped with necessary machinery for the industry and such other staff and labour quarters as may be deemed necessary by the Lessee and as may be permitted in writing by the Lessor for the purpose of the industry according to the Bye-laws, Rules and Regulations framed by the local authorities and having jurisdiction in the area in which the industrial plot is situated, or in accordance with any direction of an officer appointed by the Lessor on this behalf. The Lessee shall submit plans, sections, elevations and specifications for the construction of the buildings to be erected upon the industrial plot for the approval of an officer appointed by the Lessor in this behalf, in quadruplicate and shall not start the work of construction unless and until the approval of the said officer has been obtained in writing. The Lessee may, after the buildings have been completed in accordance with the approved plans, section, elevations and specifications, make minor alterations and/or additions

to the building/buildings provided the said alterations and/or additions do not conflict with any Bye-laws, Rules or Regulations of local authorities and the provision of the Factories Act, 1948.

- (iii) That he, if need be, shall apply for and obtain a licence for the Industry under the Industries (Development and Regulations) Act, 1951, within a period of one year from the date of execution of this lease and if he fails to do so or the licence is not granted by the competent authority within the said period, this lease shall become liable for termination at the option of the Lessor provided that the Lessor may extend the period for obtaining the licence if the delay in granting it arises on the part of or is attributable to the competent authority.
- (iv) That he shall establish the Industry and the factory in accordance with and within the time specified in the licence granted to him under the Industries (Development and Regulation) Act, 1951, and in case no licence is required for establishing the industry aforesaid, he shall establish the industry and the factory in accordance with and within the time specified in the scheme approved by the Himachal Pradesh Government or any other competent authority or within the time mutually agreed upon between the Lessor the Lessee and any breach of this condition shall render this Lease liable for termination at the option of the Lessor.
- (v) That he will perform, observe and comply with all obligations and requisitions in respect of the industrial plot and building thereon and business carried therein imposed by any statute, regulation or Bye-laws of any competent authority and also the lawful directions of any public or local authority;
- (vi) That he will not assign or under let or otherwise part in any manner whatsoever, with the industrial land or any construction erected thereon or any of the industrial plot or of the said construction without the prior permission in writing of the Lessor, provided, however, that it shall be lawful for the Lessee with the previous approval of the Lessor in writing to mortgage his interest in the industrial plot as well as his interest in any building and machinery set up by him or the industry to be set up by him on the industrial plot as security in respect of any moneys advanced by a State Finance Corporation, or by the Government of Himachal Pradesh, or by a Scheduled Bank or by any Insurance company or by an other person for the purpose of setting up or expansion of the Industry in the said land;
- (vii) Subject to the provisions of clause (vi) he will register all changes in the possession of the said land or of the buildings and machinery thereon whether by transfer succession or otherwise with an office appointed for this purpose by the Lessor within one calendar month from the respective dates of such charges, and of the Lessee shall without sufficient cause neglect to register such changes the Lessor may impose on him for each such case of neglect to register such changes a

penalty not exceeding Rs. 100 and the said Lessor may in addition to the other remedies available to him under these presents enforce the payment of such penalties in the same manner as in the case of arrears of land revenue;

- (viii) That the Lessor and all persons acting under his orders shall be at liberty at all reasonable times during the term of this lease to enter upon the industrial plot or any buildings that may be erected thereon for any purpose connected with the lease.
  - (ix) That the Lessee may, at the expiration of the term of the lease obtain a renewal of the lease for a further period of 99 years at Lessor's option;
  - (x) That in the event of the project not materialising or the industry failing, the Lease will be terminated and the lessor shall have the first option to acquire on such termination the buildings, machinery, etc., at an agreed price, or failing that at price determined by a sole arbitrator agreed upon by both the Lessor and the Lessee; or in the absence of such a sole agreed arbitrator, by two Arbitrators, one to be appointed by the Lessor and one by the Lessee. The provisions of the Arbitration Act, 1940 and any statutory modifications thereof shall apply to any of such arbitration. If the Lessor does not exercise his option the Lessee shall peacefully and quietly surrender to the Lessor vacant possession of the said land after removing any constructions made or machinery fixed etc. within a period of two years completed from the date of termination of the Lease;
  - (xi) That the condition of surrender of vacant possession by the Lessee and of the first option of the Lessor of acquisition referred to in clause (x), shall *mutatis mutandis* apply in the event of the expiry of the term of the lease without renewal and in the event of the sooner determination of the lease in accordance with the terms and conditions in the manner stated in clause;
  - (xii) That the cost of execution and registration of the Lease deed shall be borne by the Lessee;
  - (xiii) That any sum of money due to or claimable by the Lessor in respect of the land hereby demised shall be recoverable by the lessor as arrears of land revenue;
  - (xiv) That in case any portion of the demised land is not used by the Lessee for the purpose of the industry, then notwithstanding any other covenant herebefore or hereinafter contained, the Lessor shall have the right to resume that portion of the land after giving three months notice to the Lessee provided that the Lessor shall not exercise this option till after the expiry of 5 years from the date of completion of the Industry in accordance with the conditions of the licence granted under the Industries (Development and Regulation) Act, 1951 or in accordance with the approval granted by the Himachal Pradesh Government or any other competent authority.
7. All notices, orders, directions, consents or approvals to be given under this Lease shall be in writing and shall be signed by such officer as maybe authorised by the lessor and shall be considered

as duly served, upon the Lessee or any person claiming any right to the industrial plot if the same shall have been affixed to any building or erection whether temporary or otherwise upon the industrial plot or shall have been delivered at or sent by post to the then residence, office or place of business of the Lessee or such person:

8. In witness whereof the President of India, has caused on his behalf set his hands and the Lessee has hereunder set his hands the day and year first above written.

THE SCHEDULE REFERRED TO ABOVE  
All that piece of land comprising of Khasra Nos./Plot No. .... situated at .....  
District ..... Himachal Pradesh and measuring ..... and bounded.  
On the South .....  
On the North ..... land of .....  
On the East .....  
On the West ..... Plan attached.  
Signed by Shri ..... (Lessee)  
Signed by Shri ..... (Lessor)  
on behalf of the Governor  
of Himachal Pradesh.  
In the presence of:— Witnesses:  
Witnesses:

#### PUBLIC WORKS DEPARTMENT NOTIFICATIONS

Simla-2, the 17th January, 1973

No. 2-33/70-PWD.—Whereas it appears to the Governor, Himachal Pradesh that land is likely to be required to be taken by the Himachal Pradesh Government at the public expense for a public purpose, namely, for the construction of Kurpan-Kuhl in Nirmand Block, it is hereby notified that land in the locality described below is likely to be acquired for the above purpose.

This Notification is made under the provision of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor, Himachal Pradesh is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested, who has any objection to the acquisition of the said land in the locality may, within thirty days of the publication of this Notification, file an objection in writing before the Collector of Land Acquisition, Himachal Pradesh Public Works Department, Kasumpti, Simla-9.

#### SPECIFICATION

District: KULU Sub-Tehsil: NIRMAND

Village 1	Khasra No. 2	Area Big. Bis. 3 4	
		3	4
PATI DETHWA	127	1	9
	82	1	10
	391	1	8
	804	1	10
	718	4	9
	796	1	11
	148	4	16
	85	0	14
	114	2	16

1	2	3	4
	84	2	4
	96	4	12
	175	0	13
	191	0	18
	116	1	10
	88	3	3
	90	2	18
	886	1	12
	891	2	6
	897	4	13
	159	0	4
	806	0	5
	814	3	8
	805	0	17
	869	6	16
	160	3	6
	158	1	2
	944	2	18
	906	0	6
	907	0	8
	478	3	12
	890	2	5
	887	1	8
	943	2	5
	795	1	2
	798	0	4
	935	8	17
	934	4	9
	945	1	4
	858	2	0
	857	2	4
	794	3	16
	117	1	8
	118	2	15
	171	0	4
	172	0	5
	173	0	10
	174	0	1
	797	1	17
	128	1	3
	176	0	10
	901	1	14
	79	0	3
	86	4	0
	898	0	12
Total		111	19

Simla-2, the 19th January, 1973

No. 2-35/70-PW.—Whereas Governor, Himachal Pradesh is satisfied that the land is needed by the Government at public expense for a public purpose, namely for construction of Brahmputkar-Deoth Road in Bilaspur district, it is hereby declared that the land described in the specification below is required for the above purpose.

2. The declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Land Acquisition, Himachal Pradesh, Public Works Department, is hereby directed to order for the acquisition of the said land.

3. A plan of the land may be inspected in the office of the Collector, Land Acquisition, Himachal Pradesh Public Works Department, U. S. Club, Simla-1, and



the Executive Engineer, Bilaspur Division No. 2, Himachal Pradesh Public Works Department, Bilaspur.

### SPECIFICATION

District: BILASPUR

Tehsil: SADAR

Village 1	Khasra No. 2	Area Big. Bis. 3 4
MAJHER	1/1	0 8
	4/1	0 14
	5/1	1 6
	9/1	1 3
	11/1	0 3
	16/1	1 7
	17/1	0 1
	20/1	1 15
	21/1	0 9
	22/1	0 3
	26/1	2 0
	28/1	0 19
	29/1	1 2
	30/1	0 3
	31/1	0 19
	32/1	0 11
	51/1	0 14
	51/2	0 2
	117/1	1 8
	116	0 3
	118/1	0 12
	119/1	2 14
	120/1	0 8
	122/1	0 4
	123/1	0 18
	127/1	0 9
	135/1	0 15
	136/1	0 8
	138/1	0 18
	143/1	0 18
	145/1	0 13
	147/1	0 12
Total		24 19

By order,  
H. S. DUBEY,  
Secretary.

### REVENUE DEPARTMENT NOTIFICATIONS

Simla-2, the 20th January, 1973

No. 9-2/71-Rev-II.—In exercise of the powers conferred by sub-section (1) of section 52 of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, the Governor of Himachal Pradesh is pleased to delegate the powers of the State Government under sub-section (1) of section 15 of the said Act to the Director Consolidation of Holdings, Himachal Pradesh with immediate effect.

Sd/-  
Under Secretary.

Simla-2, the 20th January, 1973

No. 4-8/71-Rev. Cell.—In exercise of the powers vested in him under section 48(1) of the Land Acquisition Act, 1894, the Governor, Himachal Pradesh is pleased to withdraw from the proceedings initiated for the

acquisition of 3-17-5 Bighas of land in village Pandoh, Tehsil Sadar, District Mandi vide notification No. 4-8/71-Rev. Cell, dated the 28th March, 1972, for the "Widening of Road from left side of Juni Khad to Gadda Nallah in Village Pandoh, Tehsil Sadar, District Mandi, Himachal Pradesh."

Simla-2, the 20th January, 1973

No. 4-52/72-Rev. Cell.—Whereas it appears to the Governor, Himachal Pradesh that land is likely to be required to be taken by the Himachal Pradesh Government at the public expense for a public purpose, namely for the "Pandoh Dam Reservoir from RL 2900' to RL 2950' in village Shainoo, Tehsil Chachiot, District Mandi, Himachal Pradesh", it is hereby notified that land in the locality described below is likely to be acquired for the above purpose.

This notification is made under the provision of section 4 of Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor, Himachal Pradesh is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested, who has any objection to the acquisition of the said land in the locality may, within thirty days of the publication of this notification, file an objection in writing before the Land Acquisition Collector, Beas-Sutlej Link Project, Mandi district, Mandi, Himachal Pradesh.

### SPECIFICATION

District: MANDI

Tehsil: CHACHIOT

Village	Khasra No.	Area Big. Bis. Bisw
SHAINOO	479	0 1 5
	486	0 0 16
	488	0 3 16
Total		0 5 17

By order,  
L. HMINGLIANA TOCHHAWNG,  
Secretary.

### WELFARE DEPARTMENT ADDENDUM

Simla-2, the 22nd January, 1973

No. 6-1/71-Wel-Sectt.—Please add the words 'Statistical Assistant' after the word 'Assistant' against column No. 11 item No. (iii) appearing in this Department notification of even number, dated the 27th November 1972.

PRAKASH CHAND,  
Secretary.

## भाग 2—वैधानिक नियमों को छोड़ कर विभिन्न विभागों के अध्यक्षों और जिला मैजिस्ट्रेटों द्वारा अधिसूचनाएं इत्यादि

### PUBLIC WORKS DEPARTMENT NOTIFICATIONS

Solan, the 10th January, 1973

No. SE-III-G(B)69-4/72-1161-64.—Whereas it appears to the Governor, Himachal Pradesh that land is likely to be required to be taken by the Himachal Pradesh Government at the public expense for a public purpose, namely for the construction of Chiknal Gang Hut. it is hereby notified that land in the locality described below is likely to be acquired for the above purpose.

This notification is made under the provision of section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor, Himachal Pradesh is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested, who has any objection to the acquisition of the said land in the locality may, within thirty days of the publication of this notification, file an objection in writing before the Collector of Land Acquisition, Himachal Pradesh Public Works Department, Solan.

### SPECIFICATION

District: SIRMUR Tehsil: RENUKA

Village	Khasra No.	Area Big. Bis.
DAHU	246/1/1	1 5

S. P. KAPOOR,  
Superintending Engineer,  
3rd Circle, H.P. P.W.D., Solan.

Dharamsala, the 19th January, 1973

No. SEV-RDH-16/69/1/WS.—Whereas it appears to the Governor, Himachal Pradesh that the land is required to be taken by the Government at public expense for a public purpose, namely for construction of Shahpur-Chumbi road via Rehlu mile No. 5 R.D. 22300 to 27600 in Tehsil and District Kangra, it is hereby declared that the land described in the specification below is required for the above purpose.

2. The declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Land Acquisition, Himachal Pradesh Public Works Department, is hereby directed to take order for the acquisition of the said land.

3. A plan of the land may be inspected in the office of the Collector, Land Acquisition, Himachal Pradesh, Public Works Department, Kangra.

### SPECIFICATION

District: KANGRA

Tehsil: KANGRA

Village/Tikka	Khasra No.	Area K. M.
REHLU/NOSHEHRA	583/1	9 19
	603/1	0 15
	604/1	6 12
	130/1	5 15
	134/1	0 1
Total		23 2
REHLU/PA. NOOR	830/1	1 9
	829/1	2 3
	828/1	10 11
	831/1	0 2
Total		14 5
Grand Total		37 7

Sd/-

Superintending Engineer,  
5th Circle, H.P. P.W.D., Dharamsala.

Dalhousie, the 22nd January, 1973

No. SEVII-R-34/69-1465-68.—Whereas it appears to the Governor, Himachal Pradesh that the land is required to be taken by the Government at public expense for a public purpose, namely for construction of Bharari-Chowari Road, it is hereby declared that the land described in the specification below is required for the above purpose.

The declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894 to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Land Acquisition, Himachal Pradesh Public Works Department, is hereby directed to take order for the acquisition of the said land.

A plan of the land may be inspected in the office of the Collector, Land Acquisition, Himachal Pradesh Public Works Department, Chamba.

### SPECIFICATION

District: CHAMBA

Tehsil: BHATTIYAT

Village	Khasra No.	Area Big. Bis.
U.....	20/1	0 5
(180)	21/1	0 4
	22/1	0 5
Total		0 14

Dalhousie, the 22nd January, 1973

No. SE VII-R-185/72-1461-641.—Whereas it appears to the Governor, Himachal Pradesh that the land is required to be taken by the Government at public expense for a public purpose, namely for construction of Alwas-Kilar road, it is hereby declared that the land described in the specification below is required for the above purpose.

The declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Land Acquisition, Himachal Pradesh Public Works Department, is hereby directed to take order for the acquisition of the said land.

A plan of the land may be inspected in the office of the Collector, Land Acquisition, Himachal Pradesh Public Works Department, Chamba.

**SPECIFICATION**  
District: CHAMBA Tehsil: CHURAH

Village	Khasra No.	Area Bis. Bis
TRAKAR RENIKOT (368)	1/1 16/1 16/2 17/1	0 2 31 16 10 1 0 9
	Total	42 8

By order,  
AMARJIT SINGH,  
Superintending Engineer,  
7th Circle. H.P. P.W.D., Dalhousie.

भाग 3—अधिनियम, विधेयक और विधेयकों पर प्रवर समिति के प्रतिवेदन, वैधानिक नियम तथा हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश हाई कोर्ट, फाइनेंशियल कमिशनर तथा कमिशनर आफ इन्कम-टैक्स द्वारा अधिसूचित आदेश इत्यादि

शून्य

भाग 4—स्थानीय स्वायत्त शासन: म्यूनिसिपल बोर्ड, डिस्ट्रिक्ट बोर्ड, नोटिफाइड और टाउन एरिया तथा पंचायत विभाग

शून्य

भाग 5—वैयक्तिक अधिसूचनाएं और विज्ञापन

COURT NOTICE UNDER ORDER 5, RULE 20, CPC  
In the Court of Shri R. K. Dharmani, Sub-Judge 1st Class, Una district, Una, Himachal Pradesh

किशन सिंह Versus बतन सिंह  
CIVIL SUIT No. 353 OF 1969  
SUIT FOR POSSESSION  
Versus

बतन सिंह पुत्र हुकम सिंह, 2. हुकम सिंह, 3. बरियाम सिंह,  
1. अजीत सिंह, प्यारा सिंह, पिसरान इन्द्र सिंह, जात जाट, निवासी  
रायपुर (रायपुर) साहोड़ा बाना व तहसील ऊन्ना

प्रतिवादिगण।

Whereas in the above noted case, it has proved to the satisfaction of this court that the above noted defendants are evading the service of the summons and cannot be served in the normal course of service. Hence this proclamation is hereby issued against them to appear in this court on the date fixed for hearing on 19th February, 1973, at 10.00 A.M. personally or through an authorised agent or pleader to defend the case. Failing which ex-parte proceeding will be taken against them.

Given under my hand and the seal of the court this 27th day of December, 1972.

(Seal).

R. K. DHARMANI,  
Sub-Judge 1st Class, Una.

भाग 6—भारतीय राजपत्र इत्यादि में से पुनः प्रकाशन

(देखिए पृष्ठ 250 से 327)

भाग 7—भारतीय निर्वाचन आयोग (Election Commission of India) की वैधानिक अधिसूचनाएं तथा अन्य निर्वाचन सम्बन्धी अधिसूचनाएं

शून्य

अनुपूरक

शून्य

## PART VI

LAW DEPARTMENT  
NOTIFICATION

Simla-2, the 14th November, 1968

No. 8-1/67-LR. The following Acts recently passed by the Parliament and already published in the Gazette of India Extra-ordinary Part-II, Section I are hereby republished in the Himachal Pradesh Rajpatra for information of general public:—

1. Bihar State Legislature (Delegation of Powers) Act, 1968 (39 of 1968).
2. The Indian Patents and Designs (Amendment) Act, 1968 (44 of 1968).
3. The Gold (Control) Act, 1968 (45 of 1968).
4. The Insecticides Act, 1968 (46 of 1968).
5. The Border Security Force Act, 1968 (47 of 1968).
6. The Punjab State Legislature (Delegation of Powers) Act, 1968 (48 of 1968).

JOSEPH DINA NATH,  
Under Secretary, (Judicial)

Assented to on 30th August, 1968

THE BIHAR STATE LEGISLATURE (DELEGATION  
OF POWERS) ACT, 1968  
(Act No. 39 of 1968)

AN  
ACT

to confer on the President the power of the Legislature of the State of Bihar to make laws.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Bihar State Legislature (Delegation of Powers) Act, 1968.

2. *Definition.*—In this Act, 'Proclamation' means the Proclamation issued on the 29th day of June, 1968, under article 356 of the Constitution, by the President and published with the notification of the Government of India in the Ministry of Home Affairs No. G.S.R. 1228 of the said date.

3. *Conferment on the President of the power of the State Legislature to make laws.*—(1) The power of the Legislature of the State of Bihar to make laws, which has been declared by the Proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President.

(2) In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session, enact as a President's Act a Bill containing such provisions as he considers necessary:

Provided that before enacting any such Act, the President shall, whenever he considers it practicable to do so, consult a Committee constituted for the purpose consisting of forty members of the House of the People nominated by the Speaker and twenty members of the Council of States nominated by the Chairman.

(3) Every Act enacted by the President under sub-section (2) shall, as soon as may be after enactment, be laid before each House of Parliament.

(4) Either House of Parliament may, by resolution passed within thirty days from the date on which the Act has been laid before it under sub-section (3), which period may be comprised in one session or in two successive sessions, direct any modifications to be made in the Act and if the modifications are agreed to by the other House of Parliament during the session in which the Act has been so laid before it or the session succeeding, such

modifications shall be given effect to by the President by enacting an amending Act under sub-section (2):

Provided that nothing in this sub-section shall affect the validity of the Act or of any action taken thereunder before it is so amended.

Assented to on 31-8-1968

THE INDIAN PATENTS AND DESIGNS  
(AMENDMENT) ACT, 1968  
(Act No. 44 of 1968)

AN  
ACT

to further to amend the Indian Patents and Designs Act, 1911.  
BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Indian Patents and Designs (Amendment) Act, 1968.

(2) It shall be deemed to have come into force on the 10th day of July, 1968.

2. *Insertion of new sections 78B, 78C, 78D and 78E.*—In the Indian Patents and Designs Act, 1911 (2 of 1911) (hereinafter referred to as the principal Act), after section 78A, the following sections shall be inserted, namely:—

'78B. *Special provisions relating to applications relevant for defence purposes.*—(1) Where, in respect of an application, whether made before or after the commencement of the Indian Patents and Designs (Amendment) Act, 1968, for a patent, it appears to the Controller that the invention is relevant for defence purposes, he may, notwithstanding anything contained in the foregoing provisions of this Act, at any time before the grant of the patent omit to do or delay the doing of anything which he would otherwise be required to do in relation to the application and also, issue directions prohibiting or restricting,—

(i) the publication of information with respect to the subject-matter of the application; or

(ii) the communication of such information to particular persons or classes of persons.

(2) Where the Controller issues any such directions as are referred to in sub-section (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if, on such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) The question whether an invention in respect of which directions have been issued under sub-section (1) continues to be relevant for defence purposes, shall be reconsidered by the Central Government within nine months from the date of issue of such directions and thereafter at intervals not exceeding twelve months, and if, on such reconsideration, it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India, it shall forthwith give notice to the Controller accordingly and the Controller shall thereupon revoke the directions previously issued by him.

(4) The result of every reconsideration under sub-section (3) shall be communicated to the applicant within such time and in such manner as may be prescribed.

(5) Any directions issued under rule 47 of the Defence of India Rules, 1962, in respect of an application for a patent for an invention such as is referred to in sub-section (1), and in force immediately before the commencement of the Indian Patents and Designs (Amendment) Act, 1968, shall, in so far as such directions are not inconsistent with the provisions of this section, be deemed to have been issued under that sub-section and accordingly the provisions of this section shall, so far as may be, apply to such application.

**78C. Special provisions in respect of applications for patents in the field of food, drug or medicine.**—(1) Where the Central Government is satisfied that it is necessary or expedient in the public interest so to do, the Central Government may, by notification in the Official Gazette, and notwithstanding anything contained in the foregoing provisions of this Act, direct the Controller with respect to—

- (a) all applications for patents, whether made before or after the commencement of the Indian Patents and Designs (Amendment) Act, 1968, in respect of inventions relating to—
  - (i) substances used or capable of being used as food or as medicine or drug or
  - (ii) the methods or processes for the manufacture or production of any such substance as is referred to in sub-clause (i), or
- (b) any class of applications referred to in clause (a), to abstain from doing or delay the doing of any thing which he would otherwise be required to do in relation to such applications and the Controller shall comply with such direction.

(2) The question whether a direction issued under sub-section (1) continues to be necessary or expedient in the public interest, shall be reconsidered by the Central Government within nine months from the date of issue of such direction and thereafter at intervals not exceeding twelve months and if, on such reconsideration, it appears to the Central Government that it would no longer be necessary or expedient in the public interest to continue the direction, it shall revoke the direction.

(3) The result of every reconsideration under sub-section (2) shall be published in the Official Gazette.

(4) Any directions issued under rule 47 of the Defence of India Rules, 1962, in respect of such applications or classes of applications for patents as are referred to in sub-section (1), and in force immediately before the commencement of the Indian Patents and Designs (Amendment) Act, 1968, shall, in so far as such directions are not inconsistent with the provisions of this section, be deemed to have been issued under that sub-section and accordingly the provisions of this section shall, so far as may be, apply to such applications.

**Explanation.**—For the purposes of this section,—

- (a) "food" means any substance intended for the use of babies, invalids or convalescents, as an article of food or drink;
- (b) "medicine or drug" includes—
  - (i) all medicines for internal or external use of human beings or animals,
  - (ii) all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals,
  - (iii) all substances intended to be used for or in the maintenance of public health, or the prevention or control of any epidemic disease among human beings or animals,
  - (iv) all chemical substances which are ordinarily used as intermediates in the preparation or

manufacture of any of the medicines or substances referred to above,

but does not include insecticide, germicide, fungicide or any other substance intended to be used for the protection or preservation of plants.

**78D. Consequences of directions under section 78B or section 78C.**—(1) So long as any directions issued or deemed to have been issued under section 78B or section 78C are in force in respect of an application,—

- (a) the Controller shall not pass an order refusing to accept such application; and
- (b) notwithstanding anything contained in this Act, no appeal shall lie against any such direction or from any order of the Controller passed in respect thereof.

Provided that the application may, subject to the directions, proceed to the stage of the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application:

(2) The Controller may, having regard to the directions issued or deemed to have been issued under section 78B or section 78C in respect of any application for a patent or, as the case may be, any class of applications for patents referred to therein and subject to such conditions, if any, as he thinks fit, extend the period (including any period specified in this Act as the period on the expiry of which an application for a patent shall be deemed to have been refused, or a patent applied for shall not be sealed, or the specification accompanying an application and the drawing supplied therewith shall be open to public inspection), within which anything is required to be done by or under this Act in connection with such application or applications, whether or not such period has previously expired.

**78E. Contravention of directions under section 78B.**—

(1) If in respect of an application for a patent any person fails to comply with any direction issued or deemed to have been issued under sub-section (1) of section 78B,—

- (a) the application for the patent shall be deemed to have been abandoned;
- (b) such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(2) If the person committing an offence under sub-section (1) is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (2), where an offence under sub-section (1) has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.



*Explanation.*—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

3. *Repeal and saving.*—(1) The Indian Patents and Designs (Amendment) Ordinance, 1968 (8 of 1968) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

Assented to on 1-9-1968

THE GOLD. (CONTROL) ACT, 1968  
(ACT No. 45 OF 68)

AN  
ACT

*to provide, in the economic and financial interests of the community, for the control of the production, manufacture, supply, distribution, use and possession of, and business in, gold, ornaments and articles of gold and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

CHAPTER I  
PRELIMINARY

1. *Short title and extent.*—(1) This Act may be called the Gold (Control) Act, 1968.

(2) It extends to the whole of India.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

- (a) "Administrator" means the Administrator appointed under section 4;
- (b) "article" means any thing (other than ornament), in a finished form, made of, manufactured from or containing, gold, and includes—
  - (i) any gold coin,
  - (ii) broken pieces of an article, but does not include primary gold;
- (c) "artisan" means a person (other than a certified goldsmith) who is employed by a licensed dealer, whether on cash or deferred payment or on commission, remuneration or other valuable consideration, to make, manufacture, prepare, repair, polish or process any article or ornament or to melt, process or convert gold for the purpose of making, manufacturing, preparing, repairing or processing any article or ornament;
- (d) "certified goldsmith" means a self-employed goldsmith who holds a valid certificate, referred to in section 39;
- (e) "coin" means a thing which is stamped and issued by or on behalf of Government or by any other authority in exercise of its sovereign power in order to be used for the time being as money whether such coin is a current coin or not;
- (f) "commencement of Part XIIA of the Defence of India Rules, 1962" means the day on which that Part was initially inserted into the Defence of India Rules, 1962, that is to say, the tenth day of January, 1963;
- (g) "company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes a foreign company as defined in section

591 of the said Act;

- (h) "dealer" means any person who carries on, directly or otherwise, the business of making, manufacturing, preparing, repairing, polishing, buying, selling, supplying, distributing, melting, processing or converting, gold, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes—

(i) a Hindu undivided family which carries on such business;

(ii) a local authority, company, society registered under the Societies Registration Act, 1860 (21 of 1860), co-operative society incorporated under any law with respect to co-operative societies, club, firm or other association of persons which carries on such business, or—

(a) buys or accepts gold (for the purpose of making ornaments) from,

(b) makes, manufactures, prepares, repairs or polishes ornaments for,

(c) processes, melts or converts gold (for the purpose of making ornaments) for,

(d) sells, supplies or distributes ornaments or other gold (for the purpose of making ornaments) to, its members;

(iii) a commission agent, broker, *del credere* agent, auctioneer or other mercantile agent, by whatever name called, who carries on such business on behalf of any principal,

but does not include the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), in so far as such bank sells or transfers, or exhibits for sale or transfer, any gold.

*Explanation.*—For the purposes of this Act—

- (a) every person who acts as an agent of a dealer residing outside India and carries on the business of such dealer in India or acts on behalf of such dealer as—
  - (i) a mercantile agent as defined in the Sale of Goods Act, 1930 (3 of 1930), or
  - (ii) an agent for handling gold or documents of title relating to gold, or
  - (iii) an agent for the collection or payment of sale price of gold as a guarantor for such collection or payment; and
- (b) every branch in India of a firm or company having its registered office outside India, if such firm or company is a dealer, shall be deemed to be a dealer;
- (i) "declaration" means a declaration which is required by this Act or was required by rule 126-1 of the Defence of India Rules, 1962 or the Gold (Control) Ordinance, 1968 (6 of 1968), to be made with regard to the ownership, possession, custody or control of gold;
- (j) "gold" means gold, including its alloy (whether virgin, melted or re-melted, wrought or unwrought), in any shape or form, of a purity of not less than nine carats and includes primary gold, article and ornament;
- (k) "gold coin" means a coin made of gold of any purity, whether such purity exceeds nine carats or not;
- (l) "Gold Control Officer" means a Gold Control Officer appointed under section 4;
- (m) "licensed dealer" means a dealer who holds a

valid licence granted under section 27 authorising him to carry on business as a dealer;

- (n) "licensed refiner" means a refiner who holds a valid licence granted under section 17 authorising him to carry on business as a refiner;
- (o) "notification" means a notification published in the Official Gazette;
- (p) "ornament" means a thing, in a finished form, meant for personal adornment or for the adornment of any idol, diety or any other object of religious worship, made of, or manufactured from gold, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with, all or any of them and includes parts, pendants or broken pieces of ornament.

**Explanation.**—For the purposes of this Act, nothing made of gold, which resembles an ornament, shall be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State or Union territory;

- (q) "prescribed" means prescribed by rules made under this Act;
- (r) "primary gold" means gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires;
- (s) "refiner" means a person who, being the owner, lessee or occupier of a refinery, is engaged in the business of melting, assaying, refining, alloying or extracting gold from any ore, salt or chemicals or subjecting it to any other process;
- (t) "refinery" means a place where gold is melted, assayed, refined, alloyed or extracted from any ore, salt or chemicals or subjected to any other process for the purpose of making primary gold and includes a place where gold is assayed at the request of any dealer or other person, whether for the purpose of making primary gold or not, but does not include a place where gold is melted, alloyed or subjected to any other process by a licensed dealer or his artisan or a certified goldsmith for the purpose of making, manufacturing, preparing, repairing, polishing or processing any article or ornament;
- (u) "standard gold bar" means primary gold of such fineness, dimensions, weight and description and containing such particulars as may be prescribed;
- (v) "value" in relation to primary gold, article or ornament, means,—
  - (i) when the gold is seized under this Act, the market price of such gold as on the date of the seizure thereof,
  - (ii) when the gold is not available for seizure, the market price of such gold as on the date on which the notice referred to in section 79 is issued.

**Explanation.**—"market price",—

- (i) in relation to gold seized, means the price at which such gold is ordinarily sold or offered for sale at, or near to, the place of seizure; and
- (ii) in relation to any other gold, means the price at which such gold is ordinarily sold or offered for sale at, or near to, the place where the offence in relation to that gold is detected.

**3. Act not to apply to gold belonging to Government or the Reserve Bank.**—Nothing in this Act shall apply to, or in relation to,—

- (a) any gold belonging to, or in the possession, custody or control of, Government or the Reserve Bank of India,
- (b) any melting, assaying, refining, alloying or extracting of gold done by Government in any refinery owned or occupied by it, for the purpose of making or manufacturing primary gold for its own use or for the use of the Reserve Bank of India.

## CHAPTER II

### ADMINISTRATOR AND GOLD CONTROL OFFICERS

**4. Appointment and functions of Administrator and Gold Control Officers.**—(1) The Central Government shall, by notification, appoint an Administrator for carrying out the purposes of this Act.

(2) The Central Government may, by notification, appoint as many persons as it thinks fit to be Gold Control Officers for the purpose of enforcing the provisions of this Act.

(3) The Administrator shall discharge his functions subject to the general control and directions of the Central Government.

(4) The Administrator may authorise such person as he thinks fit to also exercise all or any of the powers exercisable by him under this Act other than the powers under sub-section (6) of this section or under clause (a) of sub-section (1) of section 80 or under section 81, and different persons may be authorised to exercise different powers.

(5) Subject to any general or special direction given or condition imposed by the Administrator, any person authorised by the Administrator to exercise any powers may exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by way of authorisation.

(6) The Administrator may also—

- (a) perform all or any of the functions of, and
- (b) exercise all or any of the powers conferred by this Act or any rule or order made thereunder on, any officer lower in rank than himself.

(7) A Gold Control Officer shall, subject to such limitations, restrictions and conditions as the Central Government may think fit to impose, exercise such powers and discharge such functions as are specified or conferred, as the case may be, by or under this Act.

**5. Power of Administrator to issue directions and orders.**—(1) The Administrator may, if he thinks fit, make orders, not inconsistent with the provisions of this Act, for carrying out the provisions of this Act.

(2) The Administrator may, so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act, by order—

- (a) regulate, after consultation with the Reserve Bank of India, the price at which any gold may be bought or sold, and
- (b) regulate by licences, permits or otherwise, the manufacture, distribution, transport, acquisition, possession, transfer, disposal, use or consumption of gold.

**6. Power of Administrator to call for returns as to receipt or sale of hypothecated gold.**—(1) The Administrator may, if he is of opinion that it is necessary in the public interest so to do, require any person who lends or advances money on the hypothecation, pledge, mortgage, or charge of any article or ornament to make to him, in such form and within such time as

may be specified, a return as to the receipt, delivery or sale of such article or ornament and as to the persons from whom they were received or, as the case may be, to whom they were delivered or sold.

(2) The Administrator may, by order, authorise any Gold Control Officer to examine the accounts relating to the receipt, delivery or sale of any gold, of any person who advances any money on the hypothecation, pledge, mortgage or charge of any article or ornament, and if any gold is found in the possession of such person which is not entered in such accounts or which is in excess of the quantity shown in such accounts, and which is not otherwise accounted for to the satisfaction of such officer, such gold shall be deemed to be in the possession of such person in contravention of the provisions of this Act.

7. *Administrator, etc., to be public servants.*—The Administrator, a Gold Control Officer, and any person authorised by the Administrator or the Central Government and performing any functions under this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

### CHAPTER III

#### RESTRICTIONS RELATING TO THE MANUFACTURE, ACQUISITION, POSSESSION, SALE, TRANSFER OR DELIVERY OF GOLD

8. *Restrictions regarding acquisition, possession and disposal of gold.*—(1) Save as otherwise provided in this Act, no person shall—

- (i) own or have in his possession, custody or control, or
- (ii) acquire or agree to acquire the ownership, possession, custody or control of, or
- (iii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, any primary gold.

(2) A person—

(a) may, subject to the provisions of section 16,—

- (i) acquire or agree to acquire the ownership, possession, custody or control of, or
- (ii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, or
- (iii) sell, deliver, transfer or otherwise dispose of, any ornament which is not required to be included in a declaration;

(b) shall not,—

- (i) acquire or agree to acquire the ownership, possession, custody or control of, or
- (ii) buy, accept or otherwise receive, or agree to buy, accept, buy or otherwise receive, or
- (iii) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of,

any ornament which is required to be included in a declaration unless such ornament has been included in a declaration which has been duly made by the person who intends to sell, deliver, transfer or otherwise dispose of such ornament.

(3) Save as otherwise provided in this Act, no person shall—

- (a) acquire, or agree to acquire, the ownership, possession, custody or control of, or
  - (b) buy, accept or otherwise receive, or agree to buy, accept or otherwise receive,
- any article, except by succession, intestate or testamentary.

(4) Save as otherwise provided in this Act, no person shall sell, deliver, transfer or otherwise dispose of, or agree

to sell, deliver, transfer or otherwise dispose of, any article to a person who is not a licensed dealer or refiner:

Provided that a person may deliver an article to a certified goldsmith for the purpose of repairing or polishing or for the purpose of getting one or more ornaments made, manufactured or prepared therefrom:

Provided further that no such sale, delivery, transfer or disposal of any article shall be made—

- (i) where such article is required to be included in a declaration unless such article has been included in a declaration which has been duly made by the person who intends to sell, deliver, transfer or otherwise dispose of the same, or
- (ii) where such article is not required to be included in a declaration, unless the sale, delivery, transfer or disposal thereof has been authorised by the Administrator.

(5) Notwithstanding anything contained in sub-section (3) and (4), a person may accept or transfer, by way of gift or exchange, gold coins, not exceeding five in number, if, together with the gold coins received by way of gift or exchange, the total holding of gold coins of the donee or transferee, as the case may be, does not exceed fifty grammes.

(6) Notwithstanding anything contained in this section, the Administrator may, if he is of opinion that the special circumstances of any case or class of cases so require, authorise any person or class of persons to buy or otherwise acquire, accept, or otherwise receive, or sell, deliver, transfer or otherwise dispose of, any primary gold or article.

9. *Restrictions on the disposal of gold acquired under any authorisation made by the Administrator.*—(1) Every person who acquires gold under any authorisation made by the Administrator shall observe such conditions and be subject to such restrictions as may be specified therein and shall furnish to the Administrator an account of such gold, if so required by the Administrator.

(2) No person receiving, accepting, buying or otherwise acquiring gold in accordance with any authorisation made by the Administrator shall—

- (i) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, or
- (ii) expose or offer for sale, delivery, transfer, or disposal of, such gold,

except in accordance with such authorisation.

10. *Loans not to be obtained on hypothecation of primary gold or undeclared gold.*—No person shall obtain from any other person any loan or advance on the hypothecation, pledge, mortgage or charge of—

- (a) any primary gold, or
- (b) any article or ornament which is required to be included in a declaration unless such article or ornament has been so included:

Provided that, in the case of an article which is not required to be included in a declaration, no transfer or delivery thereof shall be made unless such transfer or delivery has been intimated in writing to the Administrator.

11. *Prohibition regarding making, manufacturing, etc., of primary gold, articles, ornaments, etc.*—(1) Save as otherwise provided in this Act, no person shall—

- (a) make, manufacture, prepare or process, any primary gold, or
- (b) make, manufacture, prepare, repair, polish or process, any ornament, or

- (c) make, manufacture, prepare, repair, polish or process, any article, or
- (d) make, manufacture or prepare anything containing gold of any purity, whether such purity exceeds nine carats or not, or
- (e) melt, assay, refine, alloy or extract gold of any purity, whether such purity exceeds nine carats or not, or subject such gold to any other process, unless he is authorised so to do by the Administrator.

*Explanation.*—Nothing contained in this sub-section shall apply to the polishing by any person, in his dwelling house, of any article, or ornament, or both belonging to himself or to any other member of his family.

(2) Every authorisation made under sub-section (1) shall be subject to such conditions (including conditions as to the payment of any fee or charges of supervision) and restrictions as may be specified therein.

#### CHAPTER IV

#### POSSESSION OF GOLD BY PUBLIC RELIGIOUS INSTITUTIONS

**12. Ban on possession of primary gold when not to apply to primary gold which forms a part of structure, etc., of public religious institutions.**—Nothing in clause (i) of sub-section (1) of section 8 shall apply to any primary gold which forms part of any structure or any other construction or appendage within the precincts of a temple, church, mosque, gurdwara or any other place of public religious worship if such primary gold has been included in a declaration.

**13. Disposal of gold received as offerings.**—Notwithstanding anything contained in this Act, a public religious institution may receive gold as offerings:

Provided that—

- (a) where any article is received by such institution, as an offering, such article may be—
  - (i) kept by such institution for its use, or
  - (ii) sold to a licensed dealer or refiner, or
  - (iii) converted into ornaments for the deity or idol, or
  - (iv) converted, with the previous permission of the Administrator, into any new article which may be required for worship in the institution or for use in, or decoration of, the structure or other construction or appendage within the precincts of the institution;
- (b) where any primary gold is received by such institution, as an offering, the institution shall dispose of such primary gold by—
  - (i) converting the same, with the previous permission of the Administrator, into ornaments for the deity or idol, or into new articles which may be required for worship in the institution or for use in, or decoration of, the structure or other construction or appendage within the precincts of the institution, or
  - (ii) selling the same to such licensed dealer or refiner as may be specified, and under such conditions, limitations and restrictions as may be imposed, by the Administrator.

**14. Submission of monthly accounts.**—Without prejudice to the provisions of Chapter V, every public religious institution shall submit, in such form and in such manner as may be prescribed, to the Administrator monthly accounts of gold received by it as offerings and disposed of by it.

**15. Responsibility of the person in charge of public religious institution.**—The person in charge of the manage-

ment of any public religious institution shall be responsible for anything done or omitted to be done by such institution in relation to any gold.

#### CHAPTER V

#### DECLARATIONS

**16. Declarations as to articles or ornaments.**—(1) Save as otherwise provided in this Chapter, every person who owns, or is in possession, custody or control of, any article or ornament at the commencement of this Act, or acquires the ownership, possession, custody or control of any article or ornament thereafter, shall make, within thirty days from such commencement or from such acquisition, as the case may be, or within such further period as the Administrator may, on sufficient cause being shown, allow, a declaration in the prescribed form as to the quantity, description and other prescribed particulars of any article, or ornament, or both, owned, possessed, held or controlled by him:

Provided that no such declaration shall be required to be made where a person who, having owned, possessed, held or controlled any article or ornament before the commencement of this Act, has already made a declaration in relation to that article, or ornament, or both:

Provided further that nothing in this sub-section shall be construed as enabling any declaration to be made in respect of any gold for which the period prescribed or allowed under the law for the time being in force before the commencement of this Act had expired before such commencement.

(2) For the removal of doubts, it is hereby declared that the declaration referred to in this section shall be made, in relation to any article, or ornament, or both,—

- (a) owned by a minor or a lunatic, by the guardian or manager of such minor or lunatic, as the case may be;
- (b) owned by an idol or a deity, by the manager of such idol or deity, whether known as shebait or manager or by any other name;
- (c) owned, possessed, held or controlled by a person whose properties are under the management of any administrator or receiver, by such administrator or receiver;
- (d) owned, possessed, held or controlled by a person whose properties are under the management of a Court of Wards, by the manager of such Court;
- (e) vested in an executor or an administrator of a will or other testamentary disposition, by such executor or administrator;
- (f) owned, possessed, held or controlled by the members of a firm, by any partner of such firm;
- (g) owned, possessed, held or controlled by a Hindu undivided family, by the head or karta of such family;
- (h) which is the subject-matter of any public or private trust, by the trustee of such trust;
- (i) owned, possessed, held or controlled by a company, whether incorporated in or outside India, by any person in charge of the management of the affairs of such company;
- (j) belonging to a temple, church, mosque, gurdwara or any other religious institution, by the person in charge of the management of such temple, church, mosque, gurdwara or other religious institution;
- (k) which is wakf property, by the mutawalli of such wakf;
- (l) owned, possessed, held or controlled by any society, club or other association, by the secretarial manager of such society, club or other association;

1. (m) owned, possessed, held or controlled by any other person, by such person as may be prescribed.

(3) If any person who did not own, possess, hold or control, before the commencement of this Act, any quantity of gold in excess of the quantities specified in sub-section (5), acquires, after such commencement, the ownership (whether by succession, intestate or testamentary, or otherwise) possession, custody or control of any gold and if, as a result of such acquisition, the total quantity of gold owned, possessed, held or controlled by such person exceeds the quantities specified in sub-section (5), such person shall, within thirty days from the date of such acquisition or within such further period as the Administrator may, on sufficient cause being shown, allow, make a declaration in the prescribed form stating the total quantity, description and other prescribed particulars of—

- (a) the gold owned, possessed, held or controlled by him immediately after such acquisition, and  
(b) the person from whom the ownership, possession, custody or control of such gold was acquired.

(4) If any person who has made a declaration, whether under sub-section (1) or under sub-section (3) or under Part XIIA of the Defence of India Rules, 1962 or under the Gold (Control) Ordinance, 1968 (6 of 1968), as to gold owned, possessed, held or controlled by him, acquires (whether by succession, intestate or testamentary, or otherwise), parts with, after such declaration, the ownership, possession, custody or control of any quantity of gold, he shall, as often as he acquires or parts with the ownership, possession, custody or control of any quantity of gold, make, within thirty days from the date of such acquisition or parting with, or within such further period as the Administrator may, on sufficient cause being shown, allow, a further declaration in the prescribed form stating the quantity, description and other prescribed particulars of the gold in relation to which such ownership, possession, custody or control has been acquired or parted with by him and giving the prescribed particulars of the person from whom the ownership, possession, custody or control of such gold was acquired or in whose favour the ownership, possession, custody or control of such gold was parted with as the case may be.

(5) No declaration referred to in sub-section (1) or sub-section (3) shall be required to be made,—

- (a) in relation to articles, unless the total weight of articles owned, possessed, held or controlled by,—  
(i) a minor, who is not a member of a family, exceeds twenty grammes,  
(ii) an individual (other than a minor), who is not a member of a family, exceeds fifty grammes,  
(iii) a family, exceeds fifty grammes,  
(iv) any person referred to in clauses (b) to (f) and (h) to (m) of sub-section (2), exceeds fifty grammes;  
(b) in relation to any ornaments, or both articles and ornaments, where both articles and ornaments are owned, possessed, held or controlled, unless the total weight of such ornaments or both articles and ornaments, as the case may be, owned, possessed, held or controlled by,—  
(i) an individual who is not a member of a family, exceeds two thousand grammes,  
(ii) a family, exceeds four thousand grammes;  
(c) in relation to any ornaments, or both articles and ornaments, owned, possessed, held or controlled by any person referred to in clauses (b) to (f) and (h) to (m) of sub-section (2), unless the total weight of such ornaments, or both articles and ornaments,

exceeds two thousand grammes.

(6) For the purposes of this section, "family" shall be deemed to consist of—

- (i) the husband/wife and one or more minor children, or  
(ii) any two or more of them, but shall not be deemed to include any other person.

(7) Every licensed dealer or refiner shall make a declaration or further declaration, as the case may be, in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him in any capacity other than the capacity of a licensed dealer or refiner and the provisions of sub-section (5) shall not apply to such gold.

*Explanation.*—Where the licensed dealer or refiner is a company or other body corporate or a firm, the declaration referred to in this sub-section shall also be made by every director of such company or body corporate or, as the case may be, every partner of such firm, in respect of the gold owned, possessed, held or controlled by him in any capacity.

(8) Every declaration made under this section shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control Officer and thereafter shall be returned to the person making the declaration and the copy so returned shall be retained by such person as evidence of the declaration made by him under this section.

(9) Every declaration made under this section shall be kept by the Gold Control Officer in safe custody and the particulars thereof shall be entered in a register to be maintained for this purpose.

(10) A person who has made a declaration shall, as often as he acquires or parts with, after such declaration the ownership, possession, custody or control of any quantity of gold, endorse within thirty days from the date of such acquisition, or parting with, of gold, in such manner as may be prescribed, on the copy of the declaration retained by him, and shall also produce such copy, within seven days from the date of such endorsement, before the Gold Control Officer, who shall make necessary changes in the register referred to in sub-section (9) and also in the copy of the declaration kept in his safe custody.

(11) No person shall own or have in his possession, custody or control any quantity of gold which is required to be included in a declaration unless such gold has been included in a declaration or further declaration, as the case may be:

Provided that nothing in this sub-section shall apply until the expiry of the period within which a person is entitled to make a declaration or further declaration.

(12) A person upon whom a penalty has been imposed or whose gold has been confiscated under the provisions of Chapter XIII for failure to make a declaration shall, if so directed by the authority adjudging the penalty or confiscation, make a declaration within such time as may be specified in the direction.

(13) Where the period prescribed or allowed under the law in force immediately before the commencement of this Act, for any declaration to be made in respect of any gold, had not expired before such commencement, the declaration may be made within the period prescribed or allowed under such law.

## CHAPTER VI REFINERS

17. *Licensing of refiners.*—(1) Save as otherwise provided in this Act, no person shall either establish a



refinery or carry on business as a refiner unless he holds a valid licence issued in this behalf by the Administrator.

(2) A licence issued under this section,—

- (a) shall be in such form as may be prescribed,
- (b) shall be valid for such period as may be specified therein.
- (c) may be renewed, from time to time, and
- (d) may contain such conditions, limitations and restrictions as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of refiners.

(3) Every licence issued under Part XIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968 (6 of 1968), authorising the establishment of a refinery or carrying on of business as a refiner, shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity or until the cancellation thereof, whichever is earlier.

(4) A person who holds, at the commencement of this Act, a valid licence authorising him to establish a refinery or to carry on business as a refiner shall, if he intends to continue such business after the expiry of the period of its validity, make, at least one month before the expiry of such period, an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the renewal of such licence.

(5) A person who intends to establish or commence, after the commencement of this Act, a refinery or business as a refiner, shall make an application (in such form and on payment of such fees, not exceeding one hundred rupees as may be prescribed) for the issue of a licence.

(6) On receipt of an application for the issue or renewal of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing, either issue or renew the licence, or reject the application for the same:

Provided that no licence shall be issued or renewed under this section unless the Administrator, having regard to the following matters, is satisfied that the licence should be issued or renewed, namely:—

- (a) the number of refineries existing in the region in which the applicant intends to carry on business as a refiner,
- (b) the anticipated demand, as estimated by him, for refining facilities in that region,
- (c) the facilities existing in that region for the assay of gold by any method other than the touchstone method,
- (d) the turnover of the applicant, if he is already carrying on business as a refiner; during two years immediately preceding the date of application for the renewal of the licence,
- (e) the suitability and security of the premises where the applicant intends to carry on business as refiner, and the existence therein of arrangements for the storage of gold before and after refining,
- (f) the existence or the probability of existence in the refinery or the proposed refinery, as the case may be, of equipment for the manufacture of standard gold bars and the quality and adequacy of such equipment,
- (g) the competence of the applicant of manufacture standard gold bars,
- (h) the existence of facilities in the refinery for the exercise of supervision and control by the Administrator or any other person authorised

by him in this behalf,

- (i) the existence of any refinery established, or run by Government,
- (j) the suitability of the applicant,
- (k) the public interest, and
- (l) such other matters as may be prescribed.

(7) Any person to whom a licence has been issued or renewed under this section shall comply with the provisions of every law, rules, regulation or bye-law for the time being in force relating to refineries.

(8) A person to whom a licence to carry on business as a refiner is issued under this section shall not carry on business as such refiner in the same premises in which he or any other person carries on business, whether as a dealer or otherwise, or as a money-lender or banker who lends or advances money on the hypothecation, pledge, mortgage or charge of any gold.

(9) Every licensed refiner shall ensure that every person employed by him in the refinery complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and of any other law relating to gold or foreign exchange for the time being in force.

**18. Refiner to make standard gold bars only.—**(1) A licensed refiner may make or manufacture standard gold bars but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare primary gold in any other form:

Provided that such refiner may, in the process of manufacturing standard gold bars, make, manufacture or prepare primary gold.

(2) Unless authorised by the Administrator so to do, a licensed refiner shall not make, manufacture, prepare, repair or polish any article or ornament.

**19. Standard gold bar to be stamped.—**(1) Every licensed refiner, who makes, manufactures or prepares standard gold bars shall put a stamp on each such gold bar certifying its purity and such stamp shall also contain such other particulars as may be prescribed.

(2) No stamp referred to in sub-section (1) shall be used in stamping any standard gold bar unless such stamp has been approved by the Administrator.

**20. Acquisition of gold by a refiner.—**Subject to the provision of section 8, a licensed refiner may buy or otherwise acquire or accept or otherwise receive primary gold, article or ornament from a person for the purpose of refining such gold for making, manufacturing or preparing standard gold bars therefrom.

**21. Sale or delivery of gold by a refiner.—**Save as otherwise provided in this Act, no licensed refiner shall sell, deliver, transfer or otherwise dispose of gold in any form, other than in the form of standard gold bars and no such sale, delivery, transfer or disposal shall be made to any person other than a licensed dealer or refiner or certified goldsmith:

Provided that a licensed refiner may sell standard gold bars to any person on production by that person of a permit granted by the Administrator in this behalf or to such other person as the Administrator may authorise in this behalf.

**22. Licensed refiner to comply with conditions, etc.—**A licensed refiner shall not—

- (i) buy or otherwise acquire or accept or otherwise receive, or
- (ii) melt, assay, refine, alloy or extract gold or subject it to any other process, or
- (iii) sell, deliver, transfer or otherwise dispose of, any gold, except under such conditions, limitations and

restrictions as may be prescribed.

**23. Prohibition regarding possession of gold not included in any return.**—Except in the case of any quantity of gold acquired, accepted, bought or received after the date of making of any return referred to in section 56, no licensed refiner shall, in his capacity as such refiner, either own or have in his possession, custody or control any gold which has not been included in such return:

Provided that any gold acquired, accepted, bought or received after the date of making such return shall be included in the next succeeding return.

**24. Licensed refiner not to keep in a refinery any gold which is not a part of his stock-in-trade.**—Save as otherwise provided in this Act, no licensed refiner shall keep in his refinery any primary gold, article or ornament which is not a part of his stock-in-trade or held by him in his capacity as a refiner and every primary gold, ornament or article found in such refinery shall be deemed to be a part of his stock-in-trade or held by him in his capacity as a refiner.

**25. Gold ware to be refined when silver, etc., is also refined in the same premises.**—If a refiner carries on, in the same premises, the business of refining silver or other metal, he shall carry on the business of refining gold in such part of the premises and under such conditions, limitations and restrictions as may be specified by the Administrator.

**26. Silver refiner to keep record of gold recovered from such refining.**—Every person who refines or melts silver, including its alloys, shall—

- (a) maintain a record of gold, if any, recovered from such refining or melting;
- (b) declare on or before the fifth day of each month, in such form as may be prescribed, the quantity of gold so recovered during the month immediately preceding;
- (c) sell such gold within a period of thirty days from the date of such declaration or within such further period as, on sufficient cause being shown, may be allowed by the Administrator, to a licensed refiner or, if so authorised by the Administrator, to a licensed dealer.

## CHAPTER VII DEALERS

**27. Licensing of dealers.**—(1) Save as otherwise provided in this Act, no person shall commence, or carry on business as a dealer unless he holds a valid licence issued in this behalf by the Administrator.

(2) A licence issued under this section,—

- (a) will be in such form as may be prescribed,
- (b) shall be valid for such period as may be specified therein,
- (c) may be renewed, from time to time, and
- (d) may contain such conditions, limitations and restrictions as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of dealers.

(3) Every licence issued under Part XIIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968 (6 of 1968) authorising the commencement or carrying on of business as a dealer, shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity or until the cancellation thereof, whichever is earlier.

(4) A person who holds, at the commencement of this Act, a valid licence authorising him to commence or to carry on business as a dealer shall, if he intends to continue such business after the expiry of the period of its validity, make, at least one month before the expiry of such period, an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the renewal of such licence.

(5) A person who intends to commence, after the commencement of this Act, business as a dealer, shall make an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the issue of a licence.

(6) On receipt of an application for the issue or renewal of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing, either issue or renew the licence, or reject the application for the same:

Provided that no licence shall be issued or renewed under this section unless the Administrator, having regard to the following matters, is satisfied that the licence should be issued or renewed, namely:—

- (a) the number of dealers existing in the region in which the applicant intends to carry on business as a dealer,
- (b) the anticipated demand, as estimated by him, for ornaments in that region,
- (c) the turnover of the applicant, if he had been carrying on business as a dealer prior to the commencement of Part XIIA of the Defence of India Rules, 1962, during the two years immediately preceding such commencement, or, in the case of an application for the renewal of a licence, the date of the application for such renewal,
- (d) the previous experience, if any, of the applicant with regard to the making, manufacturing, preparing or polishing of, or dealing in, ornaments,
- (e) the suitability of the applicant,
- (f) the suitability of the premises where the applicant intends to carry on business as a dealer,
- (g) the public interest, and
- (h) such other matters as may be prescribed.

(7) (a) The Administrator shall specify, in each licence granted to a dealer, the premises in which such dealer shall carry on business and no other person shall carry on business as a dealer in the said premises.

(b) A licensed dealer shall not carry on business as such dealer in any premises other than the premises specified in his licence.

(8) Every licensed dealer shall ensure that every artisan or other person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and of any other law relating to gold or foreign exchange for the time being in force.

**28. Money-lending business not to be carried on in licensed premises.**—No licensed dealer shall, unless authorised by the Administrator so to do,—

- (a) carry on business as a money-lender or banker on the security of any article, or ornament, or both,
- (b) permit any other person to carry on money-lending, banking or any other business,

in the same premises in which he carries on business as such dealer.

**29. What a dealer may manufacture.**—Subject to the other provisions of this Act, a licensed dealer may make, manufacture, prepare, repair, polish or process ornaments and may also repair or polish articles but shall not, unless

authorised by the Administrator so to do, make, manufacture or prepare any primary gold or article:

Provided that such dealer may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article, ornament or standard gold bar acquired, accepted or received by him in accordance with the provisions of Part XIA of the Defence of India Rules, 1962, or, as the case may be, the Gold (Control) Ordinance, 1968 (6 of 1968), or of this Act.

30. *Ornament, etc., to be stamped.*—(1) Every licensed dealer shall stamp every piece of article or ornament made, manufactured or prepared by him certifying the purity of the gold:

Provided that nothing in this section shall apply to any article or ornament on which, owing to its nature or the smallness of its size, it is not possible to put such stamp.

(2) Every stamp referred to in sub-section (1) shall also contain such other particulars as may be prescribed.

31. *Acquisition of gold by a dealer.*—Save as otherwise provided in this Act, no licensed dealer shall buy or otherwise acquire or agree to buy or otherwise acquire or accept or otherwise receive or agree to accept or otherwise receive any article, ornament or primary gold from a person who is not a licensed dealer or refiner:

Provided that any such dealer may buy or otherwise acquire or accept or otherwise receive or agree to buy or otherwise acquire or accept or otherwise receive from a person who is not a licensed dealer or refiner,—

(i) any ornament which is not required to be included in a declaration or any ornament which, being required to be included in a declaration, has been so included,

(ii) any article which, being required to be included in a declaration has been so included, or where such article is not required to be included in a declaration, if the sale, delivery, transfer or disposal of such article has been authorised by the Administrator,

(iii) any primary gold, if the person selling, delivering, transferring, or otherwise disposing of the same has been authorised so to do by the Administrator:

Provided further that where any such dealer has delivered any article, ornament or primary gold to his artisan or a certified goldsmith, for the purpose of making, manufacturing, preparing, repairing or polishing any ornament, he may, after such ornament has been made, manufactured, prepared, repaired or polished, take back such ornament from the artisan or certified goldsmith, as the case may be.

32. *Possession of primary gold by a licensed dealer.*—Save as otherwise provided in this Act, no licensed dealer shall either own or have at any time in his possession, custody or control primary gold in any form except in the form of standard gold bars:

Provided that such dealer may, unless the Central Government (having regard to the needs of the trade, volume of business and public interest) otherwise directs, own or keep in his possession, custody or control not more than—

(a) four hundred grammes, if he does not employ any artisan,

(b) five hundred grammes, if he employs not more than ten artisans,

(c) one thousand grammes, if he employs more than ten but not more than twenty artisans.

(d) two thousand grammes, if he employs more than twenty artisans.

of primary gold in any form other than in the form of standard gold bars.

33. *Gold which is not a part of the stock-in-trade, not to be kept in the business premises of a dealer.*—No licensed dealer shall keep in the premises where he carries on business as such dealer any primary gold, article or ornament which is not a part of his stock-in-trade or held by him in his capacity as a dealer and every primary gold, ornament or article found in such premises shall be deemed to be a part of the stock-in-trade of such dealer or held by him in his capacity as a dealer.

34. *Sale or delivery of gold by a licensed dealer or certified goldsmith.*—(1) A licensed dealer may sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of ornaments to any person.

(2) Save as otherwise provided in this Act, no licensed dealer shall—

(a) sell, deliver, transfer or otherwise dispose of or agree to sell, deliver, transfer or otherwise dispose of, or

(b) expose or offer for sale, delivery, transfer or disposal—

(i) primary gold to any person other than a licensed dealer or refiner or certified goldsmith,

(ii) any article to any person other than a licensed dealer or refiner;

Provided that a licensed dealer shall not sell or transfer primary gold to any other licensed dealer or to any certified goldsmith in any form except in the form of standard gold bars.

(3) Notwithstanding anything contained in sub-section (2), a licensed dealer may sell or deliver primary gold or article to any person in pursuance of an authorisation made by the Administrator or on production by that person of a permit granted by the Administrator in this behalf.

35. *Section 34 not to apply to the transfer of gold to a certified goldsmith or to an artisan.*—Nothing contained in section 34 shall apply to the transfer or delivery, by a licensed dealer, of any primary gold or article to any certified goldsmith or artisan for the purpose of getting any ornaments made, manufactured, prepared, repaired or polished by such certified goldsmith or artisan.

36. *Acquisition, sale, etc., of gold to be subject to conditions.*—Every acquisition, acceptance, sale, delivery, transfer or disposal of gold by a licensed dealer shall be made in accordance with such conditions, limitations and restrictions as may be prescribed in this behalf.

37. *Licensed dealers may take assistance of specialists.*—A licensed dealer may, in the course, and for the purpose, of manufacturing ornaments, send gold to any other dealer who possesses equipment for drawing wires or for die-casting or who is a specialist in stone-setting, engraving, enamelling, polishing or any other special process necessary for or ancillary to, the making, manufacturing, preparing, repairing or polishing of such ornament and that other dealer shall return such gold to the licensed dealer from whom he had received it after the completion of the process for which it was sent to him.

38. *Prohibition regarding possession of gold not included in any return.*—Except in the case of any quantity of gold acquired, accepted or received after the date of making of any return referred to in section 56, no licensed dealer shall, in his capacity as such dealer, either own or have in his possession, custody or control any gold which has not been included in such return:

Provided that any gold acquired, accepted or received after the date of making such return shall be included in the next succeeding return.

### CHAPTER VIII CERTIFIED GOLDSMITHS

39. *Certified goldsmiths.*—(1) Save as otherwise provided in this Act, no person shall commence, or carry on, business as a goldsmith after the commencement of this Act, unless he holds a valid certificate recognizing him as a goldsmith.

(2) The certificate referred to in sub-section (1)—

- (a) shall be in such form as may be prescribed,
- (b) shall be valid until the death of the holder, or the cancellation, thereof, whichever is earlier, and
- (c) may contain such conditions, limitations and restrictions, as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of certified goldsmiths.

(3) Every certificate granted to a person under Part XIIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968 (6 of 1968) recognizing him as a goldsmith, shall, if in force immediately before the commencement of this Act, continue to be in force until the death of the holder, or the cancellation, thereof whichever is earlier.

(4) On and from the commencement of this Act, the following classes of persons shall be eligible to apply for the grant of a certificate, namely:—

- (a) a person who had been carrying on business as a goldsmith for more than a year immediately before the commencement of Part XII-A of the Defence of India Rules, 1962;
- (b) a person who, at the commencement of this Act, is a member of the family of a certified goldsmith and had been assisting him in his work as a goldsmith for not less than one year;
- (c) a person who has received any loan from the Government under any scheme for the rehabilitation of goldsmiths and has made, within six months from the commencement of this Act, an application for the grant of a certificate:

Provided that a certificate granted to such person shall be cancelled unless he repays the loan, within a period of two years from the date of the grant of such certificate, in such instalments as the authority by which the loan was granted may specify in this behalf;

- (d) an artisan if he surrenders his identity card as an artisan;
- (e) a person who belongs to a category or class to which, in the opinion of the Administrator, the certificate may be granted in the public interest.

*Explanation.*—A person who is engaged as a hired labourer by a certified goldsmith shall not be eligible to receive a certificate under this section.

(5) Every application for the grant of a certificate referred to in sub-section (1) shall be made in such form, in such manner and on payment of such fee, not exceeding ten rupees, as may be prescribed.

(6) On receipt of an application for the grant of a certificate, the Administrator may, after making such inquiry, if any as he may consider necessary as to the antecedents of the applicant, his competence to work as a goldsmith and his suitability for the grant of a certificate, by order, in writing either grant the certificate or reject the application for the same.

(7) Every certified goldsmith shall have in his possession the certificate granted to him while he carries on business as such goldsmith and shall produce it for inspection on demand by any Gold Control Officer.

(8) A certified goldsmith may engage not more than one hired labourer to assist him in his work as a goldsmith but such hired labourer shall not make, manufacture, prepare, repair or process any article or ornament.

40. *What a certified goldsmith may manufacture.*—A certified goldsmith may make, manufacture, prepare, repair, polish or process ornaments and may also repair or polish articles but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare any primary gold or article:

Provided that, subject to the provisions of section 42, a certified goldsmith may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article, ornament or standard gold bar acquired, accepted or received by him in accordance with the provisions of Part XIIA of the Defence of India Rules, 1962, or, as the case may be, the Gold (Control) Ordinance, 1968 (6 of 1968) or of this Act.

41. *Restrictions on acquisition or sale of gold by a certified goldsmith.*—A certified goldsmith—

(a) may—

- (i) buy standard gold bars from a licensed dealer or refiner,
- (ii) accept or otherwise receive any article, ornament or primary gold from a licensed dealer for the purpose of making, manufacturing, preparing or repairing ornaments for such licensed dealer,
- (iii) accept or otherwise receive, subject to the provisions of section 8, from any other person any article or ornament for the purpose of making, manufacturing or preparing ornament for such person or for the purpose of repairing or polishing such article or ornament;
- (b) shall not, save as otherwise provided in this Act, buy or agree to buy or sell or agree to sell any primary gold, article or ornament.

42. *Limit on primary gold which a certified goldsmith may possess.*—No certified goldsmith shall either own or have at any time in his possession, custody or control any quantity of—

- (i) standard gold bars in excess of one hundred grammes, or
- (ii) any quantity of primary gold (including standard gold bars) in excess of three hundred grammes.

43. *Section 37 to apply to certified goldsmiths.*—The provisions of section 37 shall apply so far as may be to a certified goldsmith as they apply to a licensed dealer subject to the modification that every reference therein to a licensed dealer shall be construed as a reference to a certified goldsmith.

### CHAPTER IX ARTISANS

44. *Artisans.*—(1) A licensed dealer may employ, whether on a whole-time or part-time basis or on payment of daily wages or other remuneration, an artisan—

- (a) who is or was a dealer or a goldsmith or was employed by a dealer, for a period of not less than one year immediately preceding the commencement of Part XII-A of the Defence of India Rules,

1962, or at any time thereafter but before the commencement of this Act, or

(b) who is eligible to obtain a certificate recognizing him as a goldsmith.

(2) No person shall be employed by any licensed dealer as an artisan unless an identity card has been given to such artisan by the licensed dealer and no artisan, the countersignature of whose identity card has been refused or whose identity card has been cancelled, shall be employed by a licensed dealer after such refusal or cancellation.

(3) Before employing an artisan, a licensed dealer shall make inquiries as to the antecedents of the artisan and grant him an identity card, in such form and containing such particulars as may be prescribed, and enter the name and the prescribed particulars of such artisan in a register to be maintained in such form as may be prescribed and shall send such identity card within one month from the date of issue thereof to the Gold Control Officer for approval and countersignature.

(4) On receipt of the identity card of an artisan under this Act the Gold Control Officer, may, after making such inquiry, if any, as he may consider necessary, either countersign the identity card or if he is of opinion that the applicant is not a suitable person for employment as an artisan, refuse in writing to countersign such identity card.

(5) The Gold Control Officer may, if he is satisfied that the particulars of an artisan, as entered in the register referred to in sub-section (3) are incorrect or false in material particulars or that the artisan has contravened any provision of this Act or any rule or order made thereunder or of any other law relating to gold or foreign exchange for the time being in force, cancel the identity card of such artisan:

Provided that no such cancellation shall be made unless the artisan has been given a reasonable opportunity of showing cause against the proposed action.

(6) The identity card,—

(a) of an artisan, who is dismissed by the dealer by whom he is employed, or

(b) the countersignature of which has been refused, or

(c) which has been cancelled,

shall be immediately recovered by the licensed dealer by whom the artisan holding such card is employed, and such dealer shall immediately recover all the quantity of gold which was in the possession, custody or control of such artisan on the date of such dismissal, refusal or cancellation, as the case may be.

(7) No licensed dealer or certified goldsmith shall accept employment as an artisan unless he has, before commencing work as an artisan, surrendered his licence or certificate, as the case may be, to the Gold Control Officer:

Provided that where such licensed dealer or certified goldsmith makes an application to the effect that he intends to resume business as such dealer or goldsmith, the licence or certificate, as the case may be, which was surrendered by him may be restored to him and thereupon he shall surrender the identity card which was granted to him under this section:

Provided further that no such restoration shall be made if such dealer or goldsmith has, while functioning as an artisan, contravened any provision of this Act or of any rule or order made thereunder or of any other law, for the time being in force, relating to gold or foreign exchange.

**45. Functions of an artisan.**—Subject to the other provisions of this Act, an artisan may make, manufacture, prepare, repair or polish ornaments, and may also repair or polish an article, for the dealer by whom he is employed, but shall not, unless the dealer by whom he is employed is authorised by the Administrator, so to do, make, manufacture or prepare any primary gold or article:

Provided that such artisan may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacture or prepare primary gold (other than standard gold bar) by melting, processing or converting any article or ornament or standard gold bar received by him from the licensed dealer by whom he is employed.

**46. Limits on primary gold which an artisan may have in his possession.**—The total quantity of primary gold in the possession, custody or control, whether individually or collectively, of the artisans employed by a licensed dealer shall not, at any time, exceed the limits specified in section 32.

**47. Restrictions on the acquisition; possession or disposal of gold by an artisan.**—(1) An artisan may accept article, ornament or primary gold from the licensed dealer by whom he is employed for the purpose of making, manufacturing, preparing repairing, or polishing ornaments for such dealer.

(2) No artisan shall, save as otherwise provided in this Act,—

(i) buy or otherwise acquire or agree to buy or otherwise acquire, or

(ii) accept or otherwise receive or agree to accept or otherwise receive, or

(iii) sell, deliver, transfer or otherwise dispose or agree to sell, deliver, transfer or otherwise dispose of,

any article, ornament or primary gold.

**48. Artisan not to work at any place other than the premises of the dealer.**—An artisan shall not work as such at any place other than the premises specified in the licence issued to the dealer by whom he is employed.

**49. Artisans to carry identity cards with them.**—Every artisan shall have in his possession the identity card granted to him while he carries on work as such artisan and shall produce it for inspection on demand by any Gold Control Officer.

## CHAPTER X

### CANCELLATION AND SUSPENSION OF LICENCES AND CERTIFICATES

**50. Cancellation or suspension of licence or certificate.**—

(1) The Administrator may, if he has any reasonable cause to believe that the holder of any licence or certificate issued, renewed or continued under this Act has made any statement in, or in relation to, any application for the issue or renewal of a licence or for the issue of a certificate under this Act which is incorrect or false in material particulars or has contravened any provisions of Part XIIA of the Defence of India Rules, 1962, the Gold (Control) Ordinance, 1968 (6 of 1968) or of this Act or any rule or order made thereunder or of any other law for the time being in force which prohibits, restricts or regulates the bringing into or taking out of India of any goods [including coins, currency (whether Indian or foreign) and foreign exchange] or the carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing such goods or the making of any payment in relation to such goods,—



- (i) suspend such licence or certificate, as the case may be, pending the completion of any inquiry or trial against the holder of such licence or certificate, as the case may be, for such contravention, or
- (ii) cancel such licence or certificate, as the case may be:

Provided that no such licence or certificate shall be suspended for a period exceeding ten days or cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(2) Every person whose licence or certificate has been suspended shall, immediately after such suspension, stop functioning as such licensee or holder of such certificate and shall not resume business as such licensee or holder of such certificate until the order of such suspension has been vacated.

(3) Every person who holds a licence or certificate which is suspended or cancelled shall, immediately after such suspension or cancellation, surrender such licence or certificate, as the case may be, to the authority by which such licence or certificate was issued.

**51. Cancellation of licence or certificate on application by dealer, refiner or certified goldsmith.**—A licensed dealer or refiner or a certified goldsmith who discontinues, or intends to discontinue, business as such dealer or refiner or certified goldsmith, may make an application to the Administrator for the cancellation of his licence or certificate, as the case may be, and thereupon the Administrator may cancel the licence or certificate which was issued or renewed to such dealer or refiner or certified goldsmith.

**52. Licence to a firm to be invalid if there is any change in the partnership of a firm.**—Where any firm has been licensed under this Act to carry on business as a dealer or refiner, such licence shall, notwithstanding anything contained in this Act, become invalid on and from the date on which there is a change in the partnership of such firm, unless such change in the partnership has been approved by the Administrator.

**53. Disposal of gold in the possession of licensed dealers, refiners and certified goldsmiths in certain cases.**—Where the period of validity of any licence issued to a dealer or refiner has expired or where any application for the renewal of such licence has been rejected, or where such licence or a certificate granted to a goldsmith has been cancelled, such dealer, refiner or certified goldsmith, as the case may be, shall, within thirty days from the date of such expiry, rejection or cancellation,—

- (i) sell or otherwise transfer to any other licensed dealer or refiner the entire quantity of gold (other than ornaments) in his possession, custody or control on the date of such expiry, rejection or cancellation, as the case may be, and send intimation thereof to the Administrator; and
- (ii) either sell or otherwise transfer or take over as personal property any ornament which is in his possession, custody or control on the said date.

**54. Display of licences.**—Every licensed dealer and every licensed refiner shall display his licence at a conspicuous place of the premises in which he carries on business as a licensed dealer or refiner.

#### CHAPTER XI

#### ACCOUNTS AND RETURNS

**55. Accounts.**—(1) Every licensed dealer, every licensed refiner and every certified goldsmith shall

keep, in such form and in such manner as may be prescribed, a true and complete account of the gold owned, possessed, held, controlled, bought or otherwise acquired, or accepted or otherwise received, or sold, delivered, transferred or otherwise disposed of, by him in his capacity as such licensed dealer or refiner or certified goldsmith, as the case may be, and different forms of accounts may be prescribed for different classes of licensed dealers, refiners or certified goldsmiths.

(2) Every licensed dealer, every licensed refiner and every certified goldsmith shall as and when he buys or otherwise acquires or accepts or otherwise receives, or sells, delivers, transfers or otherwise disposes of, any gold enter in the accounts referred to in sub-section (1) the prescribed particulars of such gold and the prescribed particulars of the person from whom such gold was bought, acquired, accepted or otherwise received or to whom such gold was sold, delivered, transferred or otherwise disposed of.

(3) No licensed dealer or refiner and no certified goldsmith shall, in his capacity as licensed dealer or refiner, either own or have in his possession, custody or control any gold which has not been included in the accounts referred to in sub-section (1).

**56. Returns as to gold.**—(1) Every licensed dealer, every licensed refiner and every certified goldsmith shall furnish to the Administrator such returns as to the quantity, description and other prescribed particulars of gold owned, possessed, held or controlled by him in such form and within such time as may be prescribed and different returns may be prescribed for different classes of licensed dealers or refiners or certified goldsmiths.

(2) Every return shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control Officer and thereafter shall be returned to the dealer or, as the case may be, the refiner and the copy so returned shall be retained by the dealer or refiner as the evidence of the return made by him under this section.

**57. Production and inspection of accounts.**—(1) Every licensed dealer, and every licensed refiner and every certified goldsmith shall, if so required by the Gold Control Officer,—

- (a) produce before him any accounts, register or other documents, and
- (b) furnish to the Gold Control Officer any information relating to any gold owned by him or in his possession, custody or control or to the acceptance, receipt, acquisition, sale, delivery, transfer or other disposal of any gold by him.

(2) Every account, register and other document relating to any gold or to the acceptance, acquisition, receipt, sale, delivery, transfer or other disposal thereof and any gold owned by or in the possession, custody or control of any licensed dealer or refiner or certified goldsmith, wherever kept, shall be liable to be inspected by any Gold Control Officer and such officer may, for the purposes of such inspection, enter, at any reasonable time, the business premises of a licensed dealer or refiner or certified goldsmith.

#### CHAPTER XII

#### ENTRY, SEARCH, SEIZURE AND ARREST

**58. Power to enter and search.**—(1) Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any provision of this Act has been, or is being, or is about to be, contravened, enter and search, at any reasonable time, any refinery or the business premises of a licensed dealer or a certified

goldsmith.

(2) Any Gold Control Officer, not below the rank of a Superintendent of Central Excise, empowered in this behalf by the Central Government, may, if he has any reason to suspect that any provision of this Act has been, or is being, or is about to be, contravened, authorise any officer of Government to enter and to search any premises, vaults, lockers, or any other place, whether above or below ground, or may himself do so.

59. *Power to search person.* Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any person has secreted about his person or in any other thing,—

- (a) any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened;
- (b) any document, which, in his opinion, will be useful for, or relevant to, any inquiry or proceeding in relation to the contravention of any provision of this Act or of any rule or order made thereunder, detain and search such person or thing: provided that the period of detention if any under this section shall not exceed twenty-four hours.

60. *Conditions under which a search shall be conducted.*—(1) When any such officer referred to in section 59 is about to search the person referred to in that section he shall, if such person so requires take such person without any unnecessary delay to the nearest Gold Control Officer of gazetted rank (hereafter in this section referred to as the gazetted officer) or to the nearest magistrate.

(2) If such requisition is made the Gold Control Officer may detain the person making it until he can bring him before the gazetted officer or magistrate referred to in sub-section (1).

(3) the gazetted Officer or magistrate before whom any person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by any one excepting a female.

61. *Power to search vehicle, etc.*—Any Gold Control Officer authorised in this behalf by the Administrator may, if he has any reason to suspect that any conveyance or animal is being, or is about to be, used for the transport of any gold in respect of which he suspects that any provision of this Act has been or is being, or is about to be, contravened, at any time stop such conveyance or animal or in the case of an aircraft, compel it to land, and

- (a) rummage and search the conveyance or part thereof;
- (b) examine and search any goods in the conveyance, or on the animal;
- (c) if it becomes necessary to stop any conveyance or animal, he may use all lawful means for stopping it, and where such means fail, the conveyance or animal may be fired upon.

*Explanation.*—Any reference to a conveyance in this Chapter and in Chapters XIII, XIV and XV shall, unless the context otherwise requires, be construed as including a reference to any aircraft vehicle or vessel.

62. *Power to search to include power to break open locks, etc.*—Every person making a search under this Act shall have the power to break open the lock of any door, almirah, safe, box, cupboard, drawer, package or any other thing, if the key thereof is withheld.

63. *Power to summon persons to give evidence and*

*produce documents.*—(1) Any Gold Control Officer of a gazetted rank shall have power to summon any person whose attendance he considers necessary either give evidence or to produce any document or other thing in any inquiry which such officer is making in connection with any contravention of any provision of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession, custody or control of the person summoned.

(3) All persons so summoned shall be bound to attend in person and to state the truth upon any subject respecting which they are summoned and produce such documents and other things as may be required:

Provided that where any person has been summoned merely to produce a document or other thing, he shall be deemed to have complied with the summons if he causes such document or other thing to be produced instead of attending personally to produce the same:

Provided further that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding, within the meaning of section 193 and 228 of the the Indian Penal Code (45 of 1860).

64. *Power to call for information, etc.*—Any Gold Control Officer may, during the course of any inquiry in connection with the contravention of any provision of this Act,—

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;
- (b) require any person to produce or deliver any document or thing useful for, or relevant to, the inquiry;
- (c) examine any person acquainted with the facts and circumstances of the case.

65. *Power to impound or retain documents.*—Any document or other thing which is produced before any Gold Control Officer, in pursuance of the provisions of section 63 or section 64, may be impounded or retained in his custody by such officer for such period as he may consider necessary:

Provided that no document or other thing shall be—

- (a) impounded without recording reasons for so doing, or
- (b) retained in the custody of such officer for a period exceeding fifteen days (exclusive of holidays) unless he has obtained the approval of an officer (not below the rank of an Assistant Collector of Central Excise or of Customs), who is superior to him in rank, for so doing.

66. *Power to seize.*—(1) If any Gold Control Officer has reason to believe that in respect of any gold any provision of this Act has been, or is being, or is attempted to be, contravened, then, he may seize—

- (a) such gold along with the package, covering or receptacle, if any (and the contents thereof), in which the gold is found;
  - (b) any other goods in which any quantity of such gold has been mixed.
- (2) Any Gold Control Officer may seize—
- (a) any document or other thing which, in his opinion,

will be useful for, or relevant to, any inquiry or proceeding for the contravention of any provision of this Act or any rule or order made thereunder;

- (b) any conveyance or animal which has been, or is being, or is attempted to be, used for the transport of any gold in relation to which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened.

(3) Any document or other thing seized under sub-section (2) shall not be retained by the Gold Control Officer for a period exceeding six months from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Administrator for such retention is obtained:

Provided that the Administrator shall not authorise the retention of the document or other thing for a period exceeding thirty days after all proceedings, for which the document or other thing is useful or relevant, are completed.

(4) The person from whose custody any document or other thing is seized under sub-section (2) may make copies thereof or take extracts therefrom in the presence of the Gold Control Officer or any other person empowered by him in this behalf, at such place and at such time as the Gold Control Officer may appoint in this behalf.

(5) If a person legally entitled to the document or other thing seized under sub-section (2) objects for any reason to the approval being given by the Administrator under sub-section (3), he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the document or other thing.

(6) On receipt of the application under sub-section (5) the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it may think fit.

**67. Presumption as to documents in certain cases.**—Where any document is produced by any person under this Act or has been seized thereunder from the custody or control of any person and such document is tendered by the prosecution in evidence against him, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force,—

- (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence, notwithstanding that it is not duly stamped if such document is otherwise admissible in evidence.

**68. Power to arrest.**—Any Gold Control Officer authorised by the Administrator in this behalf may, if he has reason to believe that any person has contravened, or is contravening, or is about to contravene any provision of this Act, arrest such person and shall as soon as possible inform him of the grounds for such arrest and shall take such arrested person to the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to

the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(2) Any officer who has arrested any person under this section shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1898 (5 of 1898).

**69. Provisions of sections 102 and 103 of the Code of Criminal Procedure to apply to search and seizure.**—The provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898 (5 of 1898) relating to search and seizure shall, so far as they are applicable, apply in relation to every search made under this Act and to every seizure made in the course of such search.

**70. Power to record statements.**—Where at the time of arrest or seizure under this Act, or the detection of any contravention of any provision of this Act or any rule or order made thereunder, any person makes a statement to the officer making such arrest, seizure or detection, that officer shall record in writing the statement of such person in as nearly as possible the language in which such statement is made and shall on demand by such person furnish him with a copy of the statement.

### CHAPTER XIII

#### CONFISCATION AND PENALTIES

**71. Confiscation of gold.**—(1) Any gold in respect of which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened, shall be liable to confiscation.

(2) Any package, covering or receptacle (including its other contents) in which any gold liable to confiscation under sub-section (1) is found shall also be liable to confiscation.

(3) Where any gold liable to confiscation under sub-section (1) is mixed with other goods in such manner that such gold cannot be separated from those other goods, the whole of such goods shall be liable to confiscation.

(4) Any gold which is liable to confiscation under sub-section (1), shall be so liable notwithstanding any change in its form.

**72. Confiscation of conveyances.**—Any conveyance or animal which has been, or is being, or is attempted to be, used for the transport of gold in relation to which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened, shall be liable to confiscation unless the owner of the conveyance or animal proves that it was so used or about to be used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use:

Provided that where any such conveyance or animal is used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall, notwithstanding the provisions contained in section 73, be given an option to pay in lieu of confiscation of the conveyance or animal a fine not exceeding the value of the gold in relation to which the provision of this Act or any rule or order made thereunder has been, or is being, or is about to be, contravened.

**74. Power to give option to pay fine in lieu of confiscation.**—Wherever any confiscation is authorised by this Act, the officer adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding twice the

value of the thing in respect of which confiscation, is authorised, as the said officer thinks fit.

**74. Liability to penalty.**—Any person who, in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under this Act, or abets the doing or omission of such an act, or is in charge of the conveyance or animal which is liable to confiscation under this Act, shall be liable to a penalty not exceeding five times the value of the gold or one thousand rupees, whichever is more, whether or not such gold has been confiscated or is available for confiscation.

**75. Penalties for contravention, etc., not expressly mentioned.**—Any person who contravenes any provision of this Act or any rule or order made thereunder or abets any such contravention or who fails to comply with any provision of this Act, or any rule or order made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be liable to such penalty, not exceeding one thousand rupees, for every such contravention, failure or abetment, as the case may be.

**76. Reference to gold to be construed as reference to gold of any purity.**—Any reference to gold in this Chapter and in Chapters XII, XIV, XV and XVI shall, unless the context otherwise requires, be construed as including a reference to any article or thing made of, or containing, gold of any purity, whether such purity exceeds nine carats or not.

**77. Confiscation or penalty not to interfere with other punishments.**—No confiscation made or penalty imposed under this Act shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

#### CHAPTER XIV

#### ADJUDICATION, APPEAL AND REVISION

**78. Adjudication.**—Any confiscation may be adjudged or penalty may be imposed under this Act—

- (a) without limit, by a Gold Control Officer not below the rank of a Collector of Central Excise or of Customs;
- (b) subject to such limits as may be specified in this behalf, by such other Gold Control Officer, not below the rank of a Superintendent of Central Excise, as the Central Government may, by notification, authorise in this behalf.

**79. Giving of an opportunity to the owner of gold, etc.**—No order of adjudication of confiscation or penalty shall be made unless the owner of the gold, conveyance, or animal or other person concerned is given a notice in writing—

- (i) informing him of the grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty; and
- (ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter:

Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral:

Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of Customs may

allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.

**Explanation.**—Where any fresh adjudication is ordered under this Act, the period of six months specified in the second proviso shall be computed from the date on which such order for fresh adjudication is made.

**80. Appeal.**—(1) Any person aggrieved by any decision or order made under this Act, may prefer an appeal,—

- (a) where the decision or order has been made by a Collector of Central Excise or of Customs, as the case may be, to the Administrator;
- (b) where the decision, or order has been made by any officer below the rank of a Collector of Central Excise or of Customs, as the case may be,—
  - (i) to the Collector of Central Excise or of Customs, as the case may be, to whom the officer who made such decision or order is subordinate, or
  - (ii) if the Central Government so directs, to the Appellate Collector of Customs,

within a period of three months from the date of communication to such person of the decision or order:

Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

(2) The appellate authority may, after giving to the appellant an opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, pass such order as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case, with such directions, as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall not be made under this section unless the appellant has had an opportunity of making a representation and, if he so desires, of being heard in his defence.

**81. Power of revision of the Administrator.**—The Administrator may, of his own motion or otherwise, call for and examine the record of any proceeding in which any order of adjudication of confiscation or penalty, or any other decision or order has been made by any Gold Control Officer and against which no appeal has been preferred, for the purpose of satisfying himself as to the correctness, legality or propriety of such order or decision and may pass such orders thereon as he may think fit:

Provided that no decision or order shall be varied under this section so as to prejudicially affect any person unless such person—

- (a) has within a period of two years from the date of such decision or order received a notice to show cause why such decision or order shall not be varied, and
- (b) has been given a reasonable opportunity of making a representation and, if he so desires, of being heard, in his defence.

**82. Power of revision of the Central Government.**—(1) The Central Government may, on the application of any person aggrieved by any decision given or order made under this Act from which no appeal lies, pass such orders as it may think fit if such application has been made within six months from the date of the decision or

order or within such further time as the Central Government may allow.

(2) The Central Government may, on its own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been made on appeal for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it may think fit.

(3) No decision or order shall be varied under this section so as to prejudicially affect any person unless such person

(a) has, within a period of one year from the date of such decision or order, received a notice to show cause why such decision or order shall not be varied, and

(b) has been given a reasonable opportunity of making a representation and, if he so desires, of being heard, in his defence.

**83. Power of the adjudicating officer.**—(1) Every person or authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every person or authority making any adjudication or hearing any appeal or exercising any powers under this Act shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) Every person or authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have the power to make such orders of an interim nature as it may think fit and may also, for sufficient cause, order the stay of operation of any decision or order.

**84. Finality of orders.**—Notwithstanding anything contained in any other law—

- (a) any order passed by the Administrator or the Central Government in revision,
- (b) subject to such order of the Government or the Administrator, any order passed on appeal, and
- (c) subject to the final order of the Central Government or of the Administrator in revision and the order on appeal, any order of adjudication of confiscation, fine or penalty, or any other decision given or order made under this Act,

shall be final and shall not be called in question in any court except in a High Court and except on a question of law.

## CHAPTER XV

### OFFENCES AND THEIR TRIAL

#### **85. Punishment for illegal possession, etc., of gold.**

Whoever, in contravention of the provisions of this Act or any rule or order made thereunder,

- (i) makes, manufactures, prepares or processes any primary gold, or
- (ii) owns or has in his possession, custody or control any primary gold, or

(iii) buys or others acquires, or accepts or otherwise receives, or agrees to buy or otherwise acquire or to accept or otherwise receive, any primary gold, or

(iv) sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or disposal, any primary gold, or

(v) melts, assays, refines, extracts, alloys, or converts any gold or subjects it to any other process, or

(vi) makes, manufactures, prepares, repairs, polishes or processes, or places any order for the making, manufacturing, preparing, repairing, polishing or processing of, any article or ornament, or

(vii) buys or otherwise acquires, or accepts or otherwise receives, or agrees to buy or otherwise acquire or to accept or otherwise receive, or sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or other disposal, any article or ornament, or

(viii) owns or has in his possession, custody or control any article or ornament, or

(ix) carries on any business or transaction in gold for which a licence or certificate is required to be obtained by or under this Act, or

(x) carries on business as a banker or money-lender, shall, without prejudice to any other action that may be taken under this Act, be punished with imprisonment for a term which shall not be less than six months but not more than three years and also with fine:

Provided that the court may, if it is satisfied that the special circumstances of the case so require, impose a sentence of imprisonment for a term which may be less than six months.

**86. Failure to make a declaration.**—Whoever fails or omits to make a declaration [including a declaration referred to in sub-section (12) of section 16] without any reasonable cause or makes a declaration which is either false or which he knows or has reason to believe to be incorrect, shall, without prejudice to any other action that may be taken under this Act, be punished with imprisonment for a term which may extend to two years and also with fine.

**87. Failure to submit returns or to maintain accounts.**—Whoever omits without any reasonable cause to maintain accounts or to submit any return in accordance with the provisions of this Act or any rule or order made thereunder or who keeps any accounts or makes any statement in any return which is false or which he knows or has reason to believe to be incorrect, shall, without prejudice to any other action that may be taken under this Act be punished with imprisonment for a term which may extend to two years and also with fine, and in the event of a second or subsequent offence, with imprisonment for a term which shall not be less than six months but not more than three years and also with fine.

**88. Dealers, etc., when to be deemed to have abetted an offence.**—(1) A dealer or refiner who knows or has reason to believe that any provision of this Act or any rule or order made thereunder has been or is being, contravened, by any person employed by him in the course of such employment, shall be deemed to have abetted an offence against this Act.

(2) Whoever abets, or is deemed under sub-section (1) to have abetted, an offence against this Act, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.



**89. Punishment for the use of counterfeit stamp, etc.—**Whoever,—

- (i) counterfeits any stamp intending that the same shall be used for stamping any standard gold bar, article or ornament, or uses any counterfeit stamp knowing it to be counterfeit, or
- (ii) falsely stamps any primary gold, article or ornament with the intention of causing it to be believed that such primary gold, article or ornament is of such purity as is mentioned in such stamp, or
- (iii) sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer, or disposal, falsely stamped primary gold, article or ornament knowing or having reason to believe it to be so, or
- (iv) unlawfully has in his possession, custody or control any implement, instrument, apparatus, appliance, machinery or other equipment or any chemical, mould, stamp or any other material which he either knows or has reason to believe to be intended for refining or assaying any primary gold or for counterfeiting any mark on any standard gold bar, article or ornament,

shall be punished with imprisonment for a term which shall not be less than six months but not more than three years and shall also be liable to fine:

Provided that the court may, if it is satisfied that the special circumstances of the case so require, impose a sentence of imprisonment for a term which may be less than six months.

**90. Punishment for allowing premises to be used as refinery.**—Whoever knowingly allows any person to use any premises or any part thereof as a refinery in contravention of the provisions of section 104 shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

**91. Punishment for offences for which no punishment is provided.**—Whoever contravenes any provisions of this Act or any rule or order made thereunder for which no punishment is separately provided in this Chapter, shall be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

**92. Power of court to order forfeiture.**—A court trying an offence against this Act may order the forfeiture of any implement, instrument, apparatus, appliance, machinery or other material which the court is satisfied has been used in or in connection with the making or manufacturing of any standard gold bar, primary gold, article or ornament in contravention of the provisions of this Act or of any rule or order made thereunder.

**93. Offences by companies.**—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

**94. Wrongful search, seizure, etc., by Gold Control Officer.**—Any officer exercising powers under this Act or any rule or order made thereunder, who knows that there are no reasonable grounds for suspicion for so doing, and yet—

- (a) searches or causes to be searched any house, conveyance or place,
- (b) searches or arrests any person, or
- (c) seizes any movable property,

shall, for every such offence, be punished with fine which may extend to two thousand rupees.

**95. Failure of Gold Control Officer in duty or his connivance at the contravention of the provisions of this Act.**—

(1) Any Gold Control Officer who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of the Collector of Central Excise or of Customs, as the case may be, or has other lawful excuse for so doing, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Any Gold Control Officer who wilfully aids in or connives at the contravention of any provision of this Act or of any rule or order made thereunder shall, for every such offence, be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

**96. Punishment for giving false information.**—Any person who wilfully or maliciously gives any false information which leads to any arrest, search or seizure under this Act shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

**97. Cognizance of offences.**—(1) Save as otherwise provided in sub-section (2), no court shall take cognizance of any offence against this Act except on a complaint in writing made by a Gold Control Officer, not below the rank of a Collector of Central Excise or Customs, having jurisdiction over the area in which the offence is committed or any person authorised by him in writing in this behalf.

(2) No court shall take cognizance of any offence against this Act committed by a Gold Control Officer, except on a complaint in writing made with the previous sanction of the Central Government.

**98. Offences to be tried summarily.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898),—

- (i) no magistrate, other than a presidency magistrate or a magistrate of the first class shall try an offence against this Act,
- (ii) every offence against this Act may be tried summarily by a magistrate.

## CHAPTER XVI MISCELLANEOUS

**99. Presumption as to ownership of gold.**—Any person who has in his possession, custody or control any

primary gold, article or ornament shall be presumed, unless the contrary is proved, to be the owner thereof.

100. *Precautions to be taken by licensed refiner, dealer or certified goldsmith, before acquiring any gold.*—Every licensed dealer or refiner or certified goldsmith shall, before accepting, buying or otherwise receiving any gold from any person, take all reasonable steps to satisfy himself as to the identity of such person and if, after an inquiry made by an officer authorised in this behalf by the Administrator, it is found that such person is not either readily traceable or is a fictitious person, it shall be presumed, unless such dealer or refiner or certified goldsmith, as the case may be, establishes that he had taken all reasonable steps to satisfy himself as to the identity of such person, that such gold was bought, acquired, accepted or received by such licensed dealer or refiner or certified goldsmith, as the case may be, in contravention of the provisions of this Act.

101. *Power to take samples.*—(1) A Gold Control Officer authorised in this behalf may—

- (a) take samples of gold from any dealer, refiner or other person;
  - (b) send such samples for assay or analysis to such authority as may be prescribed and require such authority to send to him a report as to the result of the assay or analysis.
- (2) Where any sample has been taken under sub-section (1),—
- (a) such sample shall be restored to the person from whom it was taken after the purpose for which it was taken has been carried out but if such person fails to take delivery of the sample within three months from the date on which it was proposed to be returned to him, it may be disposed of in such manner as the Administrator may direct;
  - (b) no compensation shall be payable for any reduction in the weight of such sample by reason of any test, assay or analysis.

102. *Power to delegate.*—The Central Government may, by notification, direct that all or any of the powers which may be exercised by it under this Act, except those conferred by section 114, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by such person or authority as may be specified therein.

103. *Transfer or transmission of business.*—(1) Where the business of a licensed dealer or refiner is transmitted by succession, intestate or testamentary, the heir or legatee, as the case may be, shall not carry on such business or run such refinery either in his own name or in some other name unless the heir or legatee has, before the expiry of sixty days after the date of such transmission, made to the Administrator an application for the issue of a licence in accordance with the provisions of this Act:

Provided that nothing in this section shall be deemed to prohibit the heir or legatee from carrying on business as a dealer or refiner for the aforesaid period of sixty days, and, if he has applied for such licence, until he is granted the licence or is, by a notice in writing, informed by the Administrator that such licence cannot be granted to him.

(2) Where the business of a licensed dealer or refiner is transferred by sale, gift, lease or otherwise, the transferee or lessee, as the case may be, shall not carry on such business or run such refinery either in his own name or in some other name unless he has obtained a licence in accordance with this Act to carry on such business or to run refinery.

(3) The provisions of section 53 shall apply to the gold in the possession, custody or control of an heir, legatee, transferee or lessee referred to in sub-section (1) or sub-section (2) who does not intend to carry on business as a licensed dealer or refiner or whose application for the issue of a licence has been rejected, as they apply to the gold in the possession, custody or control of a licensed dealer or refiner whose application for the renewal of a licence has been rejected, or the period of validity of whose licence has expired, or whose licence has been cancelled.

104. *Prohibition of use of buildings for carrying on unlicensed refinery.*—No person,—

- (a) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, shall let the same or any part thereof with the knowledge that the same or part thereof is intended to be used as a refinery or wilfully allow any person to use such premises or any part thereof as a refinery unless the refiner has been licensed under this Act; or
- (b) being the tenant, lessee or occupier or any person in charge of any premises, shall use, or allow any person to use, such premises or any part thereof as a refinery unless the refiner has been licensed under this Act.

105. *Officers required to assist Gold Control Officer.*—All officers of police and all officers of Government engaged in the collection, or prevention of evasion, of revenue are hereby required and empowered to assist the Gold Control Officers in the execution of the provisions of this Act or of any rule or order made thereunder.

106. *Recovery of sums due to Government.*—In respect of any penalty imposed under this Act and any other sum of any kind payable to the Central Government under any of the provisions of this Act or of any rule or order made thereunder, the Gold Control Officer, who is empowered to impose such penalty or to require the payment of such sum, may deduct the amount of the penalty or such sum from any money owing to the person from whom such penalty or such sum may be recoverable or due, or may recover such amount or sum by attachment and sale of the goods belonging to such person; and if the amount of the penalty or other sum is not so recovered, the Gold Control Officer may prepare a certificate signed by him specifying the amount or other sum due from the person liable to pay the amount or sum and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount or sum specified therein as if it were an arrear of land revenue.

107. *Secrecy and fidelity.*—(1) All particulars contained in any return or declaration made or accounts, registers or other documents produced in accordance with this Act shall, save as otherwise provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no court shall be entitled to require the Administrator or any person authorised by the Administrator under this Act or any officer or other employee of Government to produce before it any such return, declaration, accounts, registers or other documents or any part thereof or to give evidence before it in respect thereof.

(2) The Administrator or any person exercising any powers or performing any functions under this Act shall not divulge—

- (i) any information contained in any return or declaration made to, or any account, register or

other document produced before, or inspected by him, or

- (ii) any other fact or information which comes to his knowledge by virtue of his office or in the course of his duty.

(3) The Administrator or any gazetted officer authorised by him in this behalf may request any officer of Government or the Reserve Bank of India to furnish any information relating to any particulars contained in any return or declaration made to, or any accounts, registers or other documents produced before or inspected by such officer under the provisions of any law if, in the opinion of the Administrator or the gazetted officer aforesaid, such information is necessary for the implementation of any provisions of this Act; and when such request is made, the officer of Government or Reserve Bank of India, as the case may be, shall comply with such request notwithstanding the provisions of any such law forbidding the furnishing of such information.

(4) Nothing in this section shall apply to, and in relation to, the disclosure of any information referred to in sub-section (1) or sub-section (2)—

- (a) for the purposes of any prosecution for any offence against this Act, or
- (b) to any officer of Government where it is necessary to make such disclosure to such officer for the purposes of this Act or of any other law.

**108. Protection of action taken in good faith.**—No suit, prosecution or other legal proceeding shall lie against the Central Government, the Administrator, any Gold Control Officer or any person authorised by the Central Government or the Administrator for performing any functions under this Act, for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

**109. Power to exempt.**—Where, on the recommendation of the Administrator or otherwise, the Central Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by order and subject to such conditions, if any, as it may specify in the order exempt any dealer or any refiner or any other person from the operation of all or any of the provisions of this Act and may, as often as may be, revoke or modify such order.

**110. Procedure in respect of gold seized by police officers.**—(1) Where any police officer seizes any gold which is alleged or suspected to have been stolen or which is found under circumstances which create suspicion of the commission of an offence, such police officer shall forthwith report the seizure of such gold to the nearest Gold Control Officer of or above the rank of a Superintendent of Central Excise.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), in every case referred to in sub-section (1), the police officer shall immediately after the dismissal of the complaint or the conclusion of the inquiry or trial, as the case may be, cause such gold to be conveyed and delivered to the nearest Gold Control Officer of or above the rank of a Superintendent of Central Excise.

**111. Effect of Act and rules, etc., inconsistent with other enactments.**—The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

**112. Presumption as to orders.**—Where an order purports to have been signed by the Administrator or any

person authorised in this behalf in exercise of any power conferred by or under this Act, a court shall presume, within the meaning of the Indian Evidence Act, 1872 (1 of 1872) that such order was so made by that person.

**113. Service of order, decision etc.**—Any order or decision passed on or any summons or notice issued under this Act, shall be served—

- (a) by tendering the order, decision, summons or notice or sending it by registered post, to the person for whom it is intended or to his agent; or
- (b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the office of the Gold Control Officer.

**114. Power to make rules.**—(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) fineness, dimensions, weight and description of a standard gold bar;
- (b) particulars to be stamped on a standard gold bar article or ornament;
- (c) forms of—
- (i) monthly accounts to be submitted by public religious institutions;
- (ii) declarations;
- (iii) licences and applications for the issue or renewal thereof;
- (iv) certificates and applications for the issue or renewal thereof;
- (v) declarations to be made as to recovery of gold by a silver renfier;
- (vi) accounts and returns to be submitted by a person acquiring gold under any permit or other authority;
- (vii) permits to be granted under this Act;
- (viii) returns to be submitted by a licensed dealer or refiner;
- (ix) identity card of an artisan;
- (x) register of artisans;
- (xi) accounts to be maintained by a licensed dealer or refiner or a certified goldsmith;
- (d) conditions, limitations and restrictions subject to which—

- (i) a dealer may sell, deliver, transfer or otherwise dispose of any gold on the hypothecation, pledge, mortgage or charge of which he had advanced any loan;
- (ii) a refiner may refine gold;
- (iii) a licensed refiner may buy, acquire, accept or receive, gold, or melt, assay, refine, extract or alloy gold or subject it to any other process, or sell, deliver, transfer or otherwise dispose of any gold;
- (iv) a licensed dealer may buy, acquire, accept or receive or sell, deliver, transfer or dispose of gold;
- (e) fees or charges to be paid—
- (i) in respect of applications for the issue or renewal of licences or certificates;
- (ii) for exercising supervision over the making, manufacturing or preparing any article or thing

made of, or containing, gold of any purity;

(iii) for any appeal or application for revision;

(f) period—

(i) of validity of a licence, certificate or permit;

(ii) within which returns and declarations as to gold should be submitted by dealers, refiners and other persons;

(g) manner in which samples of gold may be taken from any dealer, refiner or other person and the person to whom such samples may be sent for assay or analysis;

(h) manner—

(i) in which accounts are to be submitted by public religious institutions;

(ii) of endorsement on a declaration, when any gold is acquired or parted with;

(iii) of publication of notices and orders;

(i) regulating the use and consumption of gold by industrial users and other persons;

(j) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification, or annulment shall be without prejudice to the validity of anything previously done under that rule.

**115. Power of Central Government and Administrator to empower or authorise by general or special order.**—(1) Where by this Act, a power has been conferred on the Central Government or the Administrator to make any authorisation or exemption or to make any order or direction, then, such power may be exercised by a general or special order.

(2) Where, by this Act, a power has been conferred on the Central Government or the Administrator to empower or authorise any officer, then, such officer may be empowered or authorised, as the case may be, by name or by virtue of office.

**116. Repeal and savings.**—(1) The Gold (Control) Act, 1965, (18 of 1965) and the Gold (Control) Ordinance, 1968, (6 of 1968) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken, including any notification, order or appointment made, direction given, notice, licence or certificate issued, permission, authorisation or exemption granted, confiscation adjudged, penalty or fine imposed, or forfeiture ordered, whether under the Gold (Control) Ordinance, 1968 (6 of 1968) or Part XIA of the Defence of India Rules, 1962, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made, given, issued, granted, adjudged, imposed or ordered as the case may be, under the corresponding provision of this Act, as if this Act had commenced on the 29th day of June, 1968.

**117. Power to remove difficulties.**—If any difficulty arises in giving effect to the provisions of this Act, the

Central Government may, by order do anything inconsistent with the provisions of this Act) which apply to it to be necessary for the purpose of removing difficulty:

Provided that no such power shall be exercised after expiry of a period of two years from the commencement of this Act.

Assented to on 2-9-1968

## THE INSECTICIDES ACT, 1968 (ACT No. 46 OF 1968)

AN  
ACT

to regulate the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings or animals, and for matters connected therewith.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows—

**1. Short title, extent and commencement.**—(1) This Act may be called the Insecticides Act, 1968.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and for different provisions of this Act.

**2. Application of other laws not barred.**—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

**3. Definitions.**—In this Act, unless the context otherwise requires,—

(a) “animals” means animals useful to human beings and includes fish and fowl, and such kinds of wild life as the Central Government may, by notification in the Official Gazette, specify, being kinds which, in its opinion, it is desirable to protect or preserve;

(b) “Board” means the Central Insecticides Board constituted under section 4;

(c) “Central Insecticides Laboratory” means the Central Insecticides Laboratory established, or as the case may be, the institution specified, under section 16;

(d) “import” means bringing into any place within the territories to which this Act extends from a place outside those territories;

(e) “insecticide” means—

(i) any substance specified in the Schedule; or

(ii) such other substances (including fungicides and weedicides) as the Central Government may, after consultation with the Board, by notification in the Official Gazette, include in the Schedule from time to time; or

(iii) any preparation containing any one or more of such substances;

(f) “Insecticide Analyst” means an insecticide Analyst appointed under section 19;

(g) “Insecticide Inspector” means an Insecticide Inspector appointed under section 20;

(h) “label” means any written, printed or graphic matter on the immediate package and on every other covering in which the package is placed or packed and includes any written, printed or graphic matter accompanying the insecticide;

“licensing officer” means a licensing officer appointed under section 12;

- (j) "manufacture" in relation to any insecticide, includes—
- any process or part of a process for making, altering, finishing, packing, labelling, breaking up or otherwise treating or adopting any insecticide with a view to its sale, distribution or use but does not include the packing or breaking up of any insecticide in the ordinary course of retail business; and
  - any process by which a preparation containing an insecticide is formulated;
- (k) "misbranded" an insecticide shall be deemed to be misbranded—
- if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or
  - if it is an imitation of, or is sold under the name of, another insecticide; or
  - if its label does not contain a warning or caution which may be necessary and sufficient, if complied with, to prevent risk to human beings or animals; or
  - if any word, statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other words, statements, designs or graphic matter have been displayed on the label and in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use; or
  - if it is not packed or labelled as required by or under this Act; or
  - if it is not registered in the manner required by or under this Act; or
  - if the label contains any reference to registration other than the registration number; or
  - if the insecticide has a toxicity which is higher than the level prescribed or is mixed or packed with any substance so as to alter its nature or quality or contains any substance which is not included in the registration;
- (l) "package" means a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper, or other thing in which an insecticide is placed or packed;
- (m) "premises" means any land, shop, stall or place where any insecticide is sold or manufactured or stored or used, and includes any vehicle carrying insecticides;
- (n) "prescribed" means prescribed by rules made under this Act;
- (o) "registered", with its grammatical variations and cognate expressions, means registered under this Act;
- (p) "sale", with its grammatical variations and cognate expressions, means the sale of any insecticide, whether for cash or on credit and whether by wholesale or retail, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any insecticide and includes also an attempt to sell any such insecticide;
- (q) "State Government", in relation to a Union territory, means the administrator, thereof;
- (r) "worker" means a person employed under a contract of service or apprenticeship.
4. *The Central Insecticides Board.*—(1) The Central Government shall, as soon as may be, constitute a Board to be called the Central Insecticides Board to advise the Central Government and State Governments on technical matters arising out of the administration of this Act and to carry out the other functions assigned to the Board by or under this Act.
- (2) The matters on which the Board may advise under sub-section (1) shall include matters relating to—
- the risk to human beings or animals involved in the use of insecticides and the safety measures necessary to prevent such risk;
  - the manufacture, sale, storage, transport and distribution of insecticides with a view to ensure safety to human beings or animals.
- (3) The Board shall consist of the following members, namely:—
- the Director General of Health Services, *ex-officio*, who shall be the Chairman;
  - the Drugs Controller, India, *ex-officio*;
  - the Plant Protection Adviser to the Government of India, *ex-officio*;
  - the Director of Storage and Inspection, Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food), *ex-officio*;
  - the Chief Adviser of Factories, *ex-officio*;
  - the Director, National Institute of Communicable Diseases, *ex-officio*;
  - the Director General, Indian Council of Agricultural Research, *ex-officio*;
  - the Director General, Indian Council of Medical Research, *ex-officio*;
  - the Director Zoological Survey of India, *ex-officio*;
  - the Director General, Indian Standards Institution, *ex-officio*;
  - the Director General of Shipping or, in his absence, the Deputy Director General of Shipping, Ministry of Transport and Shipping, *ex-officio*;
  - the Joint Director, Traffic (General), Ministry of Railways (Railways Board), *ex-officio*;
  - the Secretary, Central Committee for Food Standards, *ex-officio*;
  - one person to represent the Ministry of Petroleum and Chemicals, to be nominated by the Central Government;
  - one pharmacologist to be nominated by the Central Government;
  - one medical toxicologist to be nominated by the Central Government;
  - one person who shall be in charge of the department dealing with public health in a State, to be nominated by the Central Government;
  - two persons who shall be Directors of Agriculture in States, to be nominated by the Central Government;
  - four persons, one of whom shall be an expert in industrial health and occupational hazard to be nominated by the Central Government;



(xx) one person to represent the Council of Scientific and Industrial Research to be nominated by the Central Government.

(4) The persons nominated under clauses (xiv) to (xx) inclusive, of sub-section (3) shall, unless their seats become vacant earlier by resignation, death or otherwise, hold office for three years from the date of their nomination, but shall be eligible for re-nomination:

Provided that the persons nominated under clauses (xvii) and (xviii) shall hold office only for so long as they hold the appointments by virtue of which their nominations were made.

(5) The functions of the Board may be exercised notwithstanding any vacancy therein.

5. *Registration Committee.*—(1) The Central Government shall constitute a Registration Committee consisting of a Chairman, and not more than five persons who shall be members of the Board (including the Drugs Controller, India and the Plant Protection Adviser to the Government of India)—

(i) to register insecticides after scrutinising their formulae and verifying claims made by the importer or the manufacturer, as the case may be, as regards their efficacy and safety to human beings and animals; and

(ii) to perform such other functions as are assigned to it by or under this Act.

(2) Where the Chairman is not a member of the Board, his term of office and other conditions of service shall be such as may be determined by the Central Government.

(3) Subject to the provisions of sub-section (2), a member of the Registration Committee shall hold office for so long as he is a member of the Board.

(4) The Committee may also co-opt such member of experts and for such purpose or period as it may deem fit, but any expert so co-opted shall have no right to vote.

(5) The Registration Committee shall regulate its own procedure and the conduct of business to be transacted by it.

6. *Other Committees.*—The Board may appoint such committees as it deems fit and may appoint to them persons who are not members of the Board, to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Board may impose, be delegated to them by the Board.

7. *Procedure for Board.*—The Board may, subject to the previous approval of the Central Government, make bye-laws for the purpose of regulating its own procedure and the procedure of any committee thereof and the conduct of all business to be transacted by it or such committee.

8. *Secretary and other Officers.*—The Central Government shall—

(i) appoint a person to be the Secretary of the Board who shall also function as Secretary to the Registration Committee; and

(ii) provide the Board and the Registration Committee with such technical and other staff as the Central Government considers necessary.

9. *Registration of insecticides.*—(1) Any person desiring to import or manufacture any insecticide may apply to the Registration Committee for the Registration of such insecticide and there shall be a separate application for each such insecticide:

Provided that any person engaged in the business of import or manufacture of any insecticide immediately before the commencement of this section shall make an application to the Registration Committee within a period of six months from the date of such commencement for the registration of any insecticide which he has been importing or manufacturing before that date.

(2) Every application under sub-section (1) shall be made in such form and contain such particulars as may be prescribed.

(3) On receipt of any such application for the registration of an insecticide, the Committee may, after such enquiry as it deems fit and after satisfying itself that the insecticide to which the application relates conforms to the claims made by the importer or by the manufacturer, as the case may be, as regards the efficacy of the insecticide and its safety to human beings and animals, register, on such conditions and on payment of such fee as may be prescribed, the insecticide, allot a registration number thereto and issue a certificate of registration in token thereof within a period of twelve months from the date of receipt of the application:

Provided that the Committee may, if it is unable within the said period to arrive at a decision on the basis of the materials placed before it, extend the period by a further period not exceeding six months:

Provided further that if the Committee is of opinion that the precautions claimed by the applicant as being sufficient to ensure safety to human beings or animals are not such as can be easily observed or that notwithstanding the observance of such precautions the use of the insecticide involves serious risk to human beings or animals, it may refuse to register the insecticide.

(4) Notwithstanding anything contained in this section, where an insecticide has been registered on the application of any person, any other person desiring to import or manufacture the insecticide or engaged in the business of, import or manufacture thereof shall on application and on payment of prescribed fee be allotted a registration number and granted a certificate of registration in respect thereof on the same conditions on which the insecticide was originally registered.

10. *Appeal against non-registration or cancellation.*—Any person aggrieved by a decision of the Registration Committee under section 9 may, within a period of thirty days from the date on which the decision is communicated to him, appeal in the prescribed manner and on payment of the prescribed fee to the Central Government whose decision thereon shall be final:

Provided that the Central Government may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

11. *Power of revision of Central Government.*—The Central Government may, at any time, call for the record relating to any case in which the Registration Committee has given a decision under section 9 for the purpose of satisfying itself as to the legality or propriety of any such decision and may pass any such order in relation thereto as it thinks fit:

Provided that no such order shall be passed after the expiry of one year from the date of the decision:

Provided further that the Central Government shall not pass any order prejudicial to any person unless that person has had a reasonable opportunity of showing cause against the proposed order.

12. *Licensing Officers.*—The State Government may, by notification in the Official Gazette, appoint such

persons as it thinks fit to be licensing officers for the purposes of this Act and define the areas in respect of which they shall exercise jurisdiction.

**13. Grant of licence.**—(1) Any person desiring to manufacture or to sell, stock or exhibit for sale or distribute any insecticide may make an application to the licensing officer for the grant of a licence:

Provided that any person engaged in the business of manufacturing or selling, stocking or exhibiting for sale or distributing any insecticide immediately before the commencement of this section shall make an application to the licensing officer for the grant of a licence within a period of three months from the date of such commencement.

(2) Every application under sub-section (1) shall be made in such form and shall contain such particulars as may be prescribed.

(3) On receipt of any such application for the grant of a licence, the licensing officer may grant a licence in such form, on such conditions and on payment of such fee as may be prescribed.

(4) A licence granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed:

Provided that where a licence has been granted to any person who has made an application under the proviso to sub-section (1), that licence shall be deemed to be cancelled in relation to any insecticide, the application for registration whereof has been refused or the registration whereof has been cancelled, under this Act, with effect from the date on which such refusal or cancellation is notified in the Official Gazette.

**14. Revocation, suspension and amendment of licences.**—

(1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that—

(a) the licence granted under section 13 has been granted because of misrepresentation as to an essential fact; or

(b) the holder of a licence has failed to comply with the conditions subject to which the licence was granted or has contravened any of the provisions of this Act or the rules made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence.

(2) Subject to any rules that may be made in this behalf, the licensing officer may also vary or amend a licence granted under section 13.

**15. Appeal against the decision of a licensing officer.**—

(1) Any person aggrieved by a decision of a licensing officer under section 13 (except under the proviso to sub-section (4) or section 14) may, within a period of thirty days from the date on which the decision is communicated to him, appeal to such authority in such manner and on payment of such fee as may be prescribed:

Provided that the appellate authority may entertain an appeal after the expiry of the said period if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of showing cause, dispose of the appeal ordinarily within a period of six months and the decision of the appellate authority shall be final.

**16. Central Insecticides Laboratory.**—The Central Government may, by notification in the Official Gazette, establish a Central Insecticides Laboratory under the control of a Director to be appointed by the Central Government to carry out the functions entrusted to it by or under this Act:

Provided that if the Central Government so directs by a notification in the Official Gazette, the functions of the Central Insecticides Laboratory shall, to such extent as may be specified in the notification, be carried out at any such institution as may be specified therein and thereupon the functions of the Director of the Central Insecticides Laboratory shall to the extent so specified be exercised by the head of that institution.

**17. Prohibition of import and manufacture of certain insecticides.**—(1) No person shall, himself or by any person on his behalf, import or manufacture—

(a) any misbranded insecticide;

(b) any insecticide the sale, distribution or use of which is for the time being prohibited under section 27;

(c) any insecticide except in accordance with the conditions on which it was registered;

(d) any insecticide in contravention of any other provision of this Act or of any rule made thereunder:

Provided that any person who has applied for registration of an insecticide under the proviso to sub-section (1) of section 9 may continue to import or manufacture any such insecticide and such insecticide shall not be deemed to be a misbranded insecticide within the meaning of sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (k) of section 3, until he has been informed by the Registration Committee of its decision to refuse to register the said insecticide.

(2) No person shall, himself or by any person on his behalf, manufacture any insecticide except under and in accordance with the conditions of, a licence issued for such purpose under this Act.

**18. Prohibition of sale, etc., of certain insecticides.**—

(1) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute, transport or cause to be used by any worker—

(a) any insecticide which is not registered under this Act;

(b) any insecticide, the sale, distribution or use of which is for the time being prohibited under section 27;

(c) Any insecticide in contravention of any other provision of this Act or of any rule made thereunder.

(2) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale or distribute any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.

**Explanation.**—For the purposes of this section an insecticide in respect of which any person has applied for a certificate of registration under the proviso to sub-section (1) of section 9, shall be deemed to be registered till the date on which the refusal to register such insecticide is notified in the Official Gazette.

**19. Insecticide Analysts.**—The Central Government or a State Government may, by notification in the Official Gazette, appoint persons in such number as it thinks fit and possessing such technical and other qualifications as may be prescribed to be Insecticide Analysts for such areas and in respect of such insecticides or class of insecticides as may be specified in the notification:

Provided that no person who has any financial interest in the manufacture, import or sale of any insecticide shall be so appointed.

**20. Insecticide Inspectors.**—(1) The Central Government or a State Government may, by notification in the Official Gazette, appoint persons in such number as it thinks fit and possessing such technical and other qualifications as may be prescribed to be Insecticide Inspectors for such areas as may be specified in the notification:

Provided that any person who does not possess the required qualifications may be so appointed only for the purposes of clause (a) and clause (d) of sub-section (1) of section 21:

Provided further that no person who has any financial interest in the manufacture, import or sale of any insecticide shall be so appointed.

(2) Every Insecticide Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) and shall be officially subordinate to such authority as the Government appointing him may specify in this behalf.

**21. Powers of Insecticide Inspectors.**—(1) An Insecticide Inspector shall have power—

- (a) to enter and search, at all reasonable times and with such assistance, if any, as he considers necessary any premises in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed, or for the purpose of satisfying himself that the provisions of this Act or the rules made thereunder or the conditions of any certificate of registration or licence issued thereunder are being complied with;
- (b) to require the production of, and to inspect, examine and make copies of, or take extracts from, registers, records or other documents kept by a manufacturer, distributor, carrier, dealer or any other person in pursuance of the provisions of this Act or the rule made thereunder and seize the same, if he has reason to believe that all or any of them, may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;
- (c) to make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or the rule made thereunder are being complied with and for that purpose stop any vehicle;
- (d) to stop the distribution, sale or use of an insecticide which he has reason to believe is being distributed, sold or used in contravention of the provisions of this Act or the rules made thereunder, for a specified period not exceeding twenty days, or unless the alleged contravention is such that the defect may be removed by the possessor of the insecticide, seize the stock of such insecticide;
- (e) to take samples of any insecticide and send such samples for analysis to the Insecticide Analyst for test in the prescribed manner; and
- (f) to exercise such other powers and may be necessary for carrying out the purposes of his act or the rules made thereunder.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

(3) An Insecticide Inspector may exercise the powers of a police officer under section 57 of the Code of Criminal Procedure, 1898 (5 of 1898), for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an insecticide is seized.

**22. Procedure to be followed by Insecticide Inspectors.**—

(1) Where an Insecticide Inspector seizes any record, register or document under clause (b) of sub-section (1) of section 21, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

(2) Where an Insecticide Inspector takes any action under clause (d) of sub-section (1) of section 21—

(a) he shall use all despatch in ascertaining whether or not the insecticide or its sale, distribution or use contravenes any of the provisions of section 18 and if it is ascertained that the insecticide or its sale, distribution or use does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the insecticide he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention, be such that the defect may be remedied by the possessor of the insecticide, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order and in case where the Insecticide Inspector has seized the stock of insecticide, he shall, as soon as may be, inform a Magistrate and obtain his orders as to the release thereof.

(3) Where an Insecticide Inspector takes any sample of an Insecticide, he shall tender the fair price thereof and may require a written acknowledgement therefor.

(4) Where the price tendered under sub-section (3) is refused, or where the Insecticide Inspector seizes the stock of any insecticide under clause (d) of sub-section (1) of section 21, he shall tender receipt therefor in the prescribed form.

(5) Where an Insecticide Inspector takes a sample of an insecticide for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into three portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the insecticide is made up in containers of small volume, instead of dividing a sample as aforesaid, the Insecticide Inspector may, and if the insecticide be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three of the said containers after suitably marking the same and, where necessary, sealing them.

(6) The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:—

- (i) one portion or container, he shall forthwith send to the Insecticide Analyst for test or analysis; and
- (ii) the second, he shall produce to the court before which proceedings, if any, are instituted in respect of the insecticide.

**23. Persons bound to disclose place where insecticides are manufactured or kept.**—Every person for the time being in charge of any premises where any insecticide is being manufactured or is kept for sale or distribution shall, on being required by an Insecticide Inspector so to do, be legally bound to disclose to the Insecticide Inspector the place where the insecticide is being manufactured or is kept, as the case may be.

**24. Report of Insecticide Analyst.**—(1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of section 22, shall, within a period of sixty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversy of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversy of the Insecticide Analyst's report the court may, of its own motion, or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the magistrate under sub-section (6) of section 22 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Insecticides Laboratory under sub-section (4) shall be paid by the complainant or the accused, as the court shall direct.

**25. Confiscation.**—(1) Where any person has been convicted under this Act for contravening any of the provisions of this Act or of the rules made thereunder, the stock of the insecticide in respect of which the contravention has been made shall be liable to confiscation.

(2) Without prejudice to the provisions contained in sub-section (1), where the Court is satisfied on the application of an Insecticide Inspector or otherwise and after such inquiry as may be necessary, that the insecticide is a misbranded insecticide, such insecticide shall be liable to confiscation.

**26. Notification of poisoning.**—The State Government may, by notification in the Official Gazette, require any person or class of persons specified therein to report all occurrences of poisoning (through the use or handling of any insecticide) coming within his or their cognizance to such officer as may be specified in the said notification.

**27. Prohibition of sale, etc., of insecticides for reasons of public safety.**—(1) If, on receipt of a report under section 26 or otherwise, the Central Government or the State Government is of opinion, for reasons to be recorded in writing, that the use of any insecticide specified in

sub-clause (iii) of clause (e) of section 3 or any specific batch thereof is likely to involve such risk to human beings or animals as to render it expedient or necessary to take immediate action then that Government may, by notification in the Official Gazette, prohibit the sale, distribution or use of the insecticide or batch, in such area, to such extent and for such period (not exceeding sixty days) as may be specified in the notification pending investigation into the matter:

Provided that where the investigation is not completed within the said period, the Central Government or the State Government, as the case may be, may extend it by such further period or periods not exceeding thirty days in the aggregate as it may specify in a like manner.

(2) If, as a result of its own investigation or on receipt of the report from the State Government, and after consultation with the Registration Committee, the Central Government, is satisfied that the use of the said insecticide or batch is or is not likely to cause any such risk, it may pass such order (including an order refusing to register the insecticide or cancelling the certificate of registration, if any, granted in respect thereof, as it deems fit, depending on the circumstances of the case.

**28. Notification of cancellation of registration, etc.**—A refusal to register any insecticide or a cancellation of the certificate of registration of any insecticide shall be notified in the Official Gazette and in such other manner as may be prescribed.

**29. Offences and punishment.**—(1) Whoever,—

- (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or
- (b) imports or manufactures any insecticide without a certificate of registration; or
- (c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or
- (d) sells or distributes an insecticide, in contravention of section 27; or
- (e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or
- (f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder,

shall be punishable—

- (i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both;
- (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) Whoever uses an insecticide in contravention of any provision of this Act or any rule made thereunder shall be punishable with fine which may extend to five hundred rupees.

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable—

- (i) for the first offence, with imprisonment for a term which may extend to six months, or with fine, or with both;
- (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) If any person convicted of an offence under this act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct.

**30. Defences which may or may not be allowed in prosecutions under this Act.**—(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purpose of section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that—

- (a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or
- (b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.
- (3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves—
  - (a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;
  - (b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and
  - (c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it.

**31. Cognizance and trial of Offences.**—(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a person authorised in this behalf by the State Government.

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act.

**32. Magistrate's power to impose enhanced penalties.**—Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, (5 of 1898), it shall be lawful for any presidency magistrate or any magistrate of the first class to pass any sentence under this Act, in excess of his power under section 32 of the said Code.

**33. Offences by companies.**—(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment

under this act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purpose of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm, means a partner in the firm.

**34. Power of Central Government to give directions.**—The Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this act or of any rule or order made thereunder.

**35. Protection of action taken in good faith.**—No prosecution, suit or other proceeding shall lie against Government, or any officer of the Government or the Board, the Registration Committee or any Committee of the Board, for anything in good faith done or intended to be done under this Act.

**36. Power of Central Government to make rules.**—(1) The Central Government may, after consultation with the Board and subject to the condition of previous publication, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Act:

Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the method of packing and labelling;
- (b) the manner of registration of an insecticide;
- (c) the functions of the Board and of the Registration Committee and the travelling and other allowances payable to members of the Board, the Registration Committee and any Committee of the Board;
- (d) the places at which insecticides may be imported and prohibit their import at any other place;
- (e) the form of application for registration of an insecticide and the particulars relating thereto;
- (f) the conditions of registration and the fee payable in respect of registration;
- (g) the manner of appeal to the Central Government under section 10 and the fee payable therefor;
- (h) the form of application for the grant of licence and the particulars relating thereto;
- (i) the form of licence, the conditions attached thereto and the fee payable therefor;



- (j) the period for which a licence may be renewed and the fee for such renewal;
- (k) the circumstances in which a licence may be varied or amended under sub-section (2) of section 14;
- (l) the functions of the Central Insecticides Laboratory;
- (m) the qualifications, powers and duties of an Insecticide Analyst and an Insecticide Inspector;
- (n) the manner of testing or analysing the samples of any insecticide and the fee payable therefor;
- (o) the form in which intimation shall be given by an Insecticide Inspector under sub-section (5) of section 22 to a person from whom a sample of an insecticide is taken for test or analysis;
- (p) the form in which an Insecticide Analyst shall submit a report of his test or analysis to the Insecticide Inspector under sub-section (1) of section 24;
- (q) the protective clothing and equipment to be used by workers during the manufacture, formulation, transport, distribution and application of insecticides and other facilities to be provided to keep themselves and things supplied to them free from any contamination;
- (r) the use by the workers of any such protective clothing, equipment and other facilities;
- (s) the precautions to be taken against poisoning through the use or handling of insecticides;
- (t) the measures for detecting and investigating cases in which poisoning has occurred;
- (u) the facilities to be provided for ensuring first-aid treatment;
- (v) the instruction and training to be provided regarding the use of things supplied to the workers for ensuring their safety;
- (w) the facilities for medical examination of workers engaged in the manufacture or handling of insecticides;
- (x) the conditions to be observed in regard to import manufacture, sale, transport, distribution, storage or use of an insecticide;
- (y) the equipment for, and method of, application of, an insecticide and the disposal of surplus material, washings and containers, following application;
- (z) the maintenance and inspection of records and returns;
- (za) the restrictions on storage of insecticides during transport or otherwise along with articles of food;
- (zb) the maximum proportion of any insecticide which may be added, to or contained in, any preparation for domestic use and the restrictions thereon;
- (zc) the manner in which refusal to register an insecticide or cancellation of certificate of registration thereof may be notified;
- (zd) the officer or authority to whom the Central Government may delegate any of the powers and functions conferred on it by this Act;
- (ze) any other matter which has to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any

modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### 37. Power of the State Government to make rules.—

(1) The State Government may, after consultation, with the Board and subject to the condition of previous publication, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this act and not inconsistent with the rules, if any, made by the Central Government.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the authority to which, the manner in which, and the fee on payment of which, an appeal may be filed under section 15 and the procedure to be followed by the appellate authority in disposing of the appeal;
- (b) the delegation of any of the powers and functions conferred by this Act on the State Government to any officer or authority specified by that Government.

### 38. Exemption.—(1) Nothing in this Act shall apply to—

- (a) the use of any insecticide by any person for his own household purposes or for kitchen garden or in respect of any land under this cultivation;
- (b) any substance specified or included in the Schedule or any preparation containing any one or more such substances, if such substance or preparation is intended for purposes other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life not useful to human beings.

(2) The Central Government may, by notification in the Official Gazette, and subject to such conditions, if any, as it may specify there, exempt from all or any of the provisions of this act or the rules made thereunder, any any educational, scientific or research organization engaged in carrying out experiments with insecticides.

## THE SCHEDULE

[See section 3(e)]

### LIST OF INSECTICIDES

Acrylonitrile  
Aldrin (1:2:3:4:10:10-hexachloro-1:4:4a:5:8;  
8a-hexahydro-1:4:5:8-dimethanonaphthalene)  
Allethrin (allyl homologue of Cinerein f).  
Aluminium Phosphide  
Amiton  
Antu (Alkyl-naphthyl thiourea).  
Aramite [2(p-tert-butylphenyl) isopropyl 1:2 chloroethyl sulphite].  
Barium Carbonate  
Barium Fluoro Silicate  
BHC (Benzene Hexachloride) 1, 2, 3, 4, 5, 6-hexachlorohexane)  
Bis-dimethylamino Flourophosphine Oxide  
Calcium Aresenate  
Calcium Cyanide

Captan (N-trichloromethylmercapto-4-Cyclohexane), 1, 2-dicarbox imide	E.P.N. (O-ethyl-O-p-nitriphenyl benzene thiophosphonate)
Carbaryl (1-naphthyl-N-methyl carbamate)	Ethoxy ethyl mercury chloride
Carbon Disulphide	Ethyl di-n-propylthiolcarbamate (Eptam)
Carbon Tetrachloride	Ethyl mercury phosphate
Chlorbenside (p-chlorobenzyl-p-chlorophenyl sulphide)	Eteyl mercury chloride
Chlorobis ethyl amino triazine.	Ethylene dibromide
Chlordane (1, 2, 3, 4, 5, 6, 7, 8, 8-Octachlore-2, 3, 3a, 4, 7, 7a-hexahydro-4, 7-methanoindane)	Ethylene Dichloride
Chlorobenzilate (Ethyl 4, 4'-dischlorobenzilate)	Fenson (Parachlorophenyl benzene sulphonate)
Chlorothion (o, o-dimethyl-o-3-chloro-4-nitrophenyl thiono phosphate)	Fenthion (3-methyl-4-methyl thiophenyl phosphorothionate)
Chloro-I.P.C.	Ferbam (Ferric Dimethyl dithio Carbamate)
Chloropicrin	Gusathion (O, O-dimethyl S (4-oxo-1, 2, 3-benzotriazinyl-3-methyl) phosphorothioate)
Chlorofenson (p-chlorophenyl-p-chlorobenzene sulphonate)	Heptachlor (1, 4, 5, 6, 7, 8, 8-heptachloro-4-7-methano-3a, 4, 7, 7a-tetrahydroindene)
S-(p-chlorophenylthio) methyl-o-o-diethyl phosphorodithioate (Trithion)	HETP (Hexaethyl tetraphosphate).
CIPC [isopropyl-N (3-chlorophenyl) carbamate]	Hexachlorobenzene
CMU (Manuron)	Hydrogen Cyanide.
Copper Arsenate	Hydrogen Phosphide
Copper Cyanide	Lead arsenate
Copper naphthanate	Lime Sulphur (Calcium Polysulphide, water-free sulphur, calcium, thiosulphate mixture)
Copper Sulphate	Lindane (gamma. B.H.C.)
Coumachlor [3-(a-acetyl-4-chlorobenzyl-4-hydroxy coumarin)]	Malathion (S-(1, 2 Bis (ethoxycarbonyl) ethyl) O, O-dimethyl-phosphoro-dithioate).
Copper Oxochloride	Maleic hydrazide (1, 2-dihydrophyropyridazine 3, 6-dione).
Cuprous Oxide	Maneb Manganese ethylene bisdithiocarbamate
Dalapon (Sodium 2, 2, dichloropropionate)	MCPA-(4-chloro-2 Methyl phenoxy acetic acid
D-D mixture	Mercuric chloride
DDD (Dichloro Diphenyl Dichloroethane)	Metaldehyde
DDT [a mixture of 1, 1, 1-trichloro-2, 2-bis (p-chlorophenyl) ethane and 1, 1, 1-trichloro-2-(o-chlorophenyl)-2 (p-chlorophenyl) ethane].	Metasystox
DDVP (2, 2-dichlorovinyl dimethyl phosphate).	Methoxychlor (1, 1, 1-trichloro-2, 2-di-p-methoxy-mercury phenylethane)
Demeton-O (O, O-diethyl-S [(2-ethylthio)-ethyl] phosphorothioate)	Methoxy ethyl mercury chloride
Demeton-S (O, O-diethyl-S [(2-ethylthio)-ethyl] phos-phorodithioate).	Methyl bromide
Diazinon (O, O-d ethyl-O [2-isopropyl-6-methyl-4-pyrimidinyl] phosphorothioate)	Methyl demeton (Dimeton-methyl and Dimeton-Methyl)
Dibrom (1, 2-dibromo, 2, 2-dichloroethyl dimethyl phosphate)	Methyl Mercury Chloride
Dichlorophenoxy acetic acid (2, 4-D). 1:4a:5:"	Methyl Parathion (O, O-dimethyl-O-p-nitrophenylthiophosphate)
Dieldrin (1:2:3:4:10:10-hexachloro-6: 7-epoxy-1 1'4a:5 5". 6:7:8:8a Octahydro-1:4:5:8-dimethanonaphthalene)	Metox (Chlorsulphicide)
Dimethoate (O, O--dimethyl-S-(N-methylcarbamoyl methyl) phos-phorodithioate)	Nabam (Disodium ethylene-1, 2-bisdithiocarbamate)
Dipterex (O, O-dimethyl-2, 2, 2-trichloro hydroxy ethyl phosphonate)	Nicotine sulphate
DNOC (Dinitro-ortho-compound) (3:5-dinitro-o-cresol)	Octa methyl pyrophosphoramide
EDCT mixture (Ethylene Dichloride Carbon Tetrachloride mixture)	Para-dichloro benzene
Elatin	Parathion (O, O-diethyl-O-p-nitrophenylthio--phosphate).
Endrin (1, 2 3, 4, 10-10 hexachloro-6, 7-epoxy-1, 4, 5a, 5, 6, 7, 8, 8-Octahydro-1, 4-endo, 5-8-dimethanonaphthalene)	Paris Green (Copper Aceto arsenite)
	Pentachloronitrobenzene (P.C.N.B.).
	Pentachlorophenol
	Phenyl mercury acetate
	Phenyl mercury chloride
	Phenyl mercury urea
	Phosdrine

Phthalimidomethyl-O-O-dimethyl phosphorodithioate (Tmidan)  
 Piperonyl butoxide (butyl carbityl) (6-propyl piperonyl) ether O  
 Pivalyl (2-Pivalyl-indane 1-3-dione)  
 Potassium Cyanide.  
 n-Propyl ethyl-n-butyl thiocarbamate (Tillam)  
 Pyrethrins (insectically active principles of *Chrysanthemum cinerariaefolium*).  
 Rotenone  
 Ryania  
 Sodium fluoroacetate  
 Sodium cyanide  
 Sodium Fluoro Silicate  
 Sulphur (wetttable or colloidal sulphur)  
 Strychnine  
 Sulphoxide (1, 2-methylene-dioxy-4 (2-octylsulphiny) propyl benzene)  
 TCA (trichlor acetic acid sodium and ammonium salts)  
 Tedion (tetrachlor diphenyl sulphone)  
 TEPP-(tetraethyl Pyrophosphate)  
 Tetrachloro-p-benzoquinone  
 Thanite  
 Thiram [bis (dimethyl Thiocarbamyl) disulphide]  
 Toly mercury acetate  
 Trichlorphon  
 Triorthocresyl Phosphate  
 Thallium sulphate  
 Thiometon  
 Toxaphene (chlorinated camphene containing 67-69 per cent chlorine)  
 Trichlorophenoxy acetic acid (2, 4, 5-T)  
 Warfarin (3-a-acetonyl benzyl-4-hydroxy-coumarin)  
 Zinc Phosphide  
 Zimet  
 Zineb (Zinc Ethylene bis-dithiocarbamate)  
 Ziram (Zinc dimethyl-dithiocarbamate)  
 Zulate

Assented to on 6-9-1968

# THE PUNJAB STATE LEGISLATURE (DELEGATION OF POWERS) ACT, 1968

(ACT No. 48 OF 1968)

AN

ACT

to confer on the President the power of the Legislature of the State of Punjab to make laws.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Punjab State Legislature (Delegation of Powers) Act, 1968.

2. *Definition.*—In this Act, "Proclamation" means the Proclamation issued on the 23rd day of August, 1968, under article 356 of the Constitution, by the President and

published with the notification of the Government of India in the Ministry of Home Affairs No. G.S.R.1548 of the said date.

3. *Conferment on the President of the power of the State Legislature to make laws.*—(1) The power of the Legislature of the State of Punjab to make laws, which has been declared by the Proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President.

(2) In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session enact as a President's Act a Bill containing such provisions as he considers necessary:

Provided that before enacting any such Act, the President shall, whenever he considers it practicable to do so, consult a Committee constituted for the purpose, consisting of—

- (a) thirty members of the House of the People nominated by the Speaker among whom shall be included all members who for the time being fill the seats allotted to the State of Punjab in that House; and
- (b) fifteen members of the Council of States nominated by the Chairman among whom shall be included all members who for the time being fill the seats allotted to the State of Punjab in that House.

(3) Every Act enacted by the President under sub-section (2) shall, as soon as may be after enactment, be laid before each House of Parliament.

(4) Either House of Parliament may, by resolution passed within thirty days from the date on which the Act has been laid before it under sub-section (3), which period may be comprised in one session or in two successive sessions, direct any modifications to be made in the Act and if the modifications are agreed to by the other House of Parliament during the session in which the Act has been so laid before it or the session succeeding, such modifications shall be given effect to by the President by enacting an amending Act under sub-section (2):

Provided that nothing in this sub-section shall affect the validity of the Act or of any action taken thereunder before it is so amended.

## THE BORDER SECURITY FORCE ACT, 1968

(ACT No. 47 OF 1968)

AN

ACT

to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

### CHAPTER I

#### PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Border Security Force Act, 1968.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(a) "active duty", in relation to a person subject to this

Act, means any duty as a member of the Force during the period in which such person is attached to, or forms part of, a unit of the Force—

- (i) which is engaged in operations against an enemy, or
- (ii) which is operating at a picket or engaged on patrol or other guard duty along the borders of India and includes duty by such person during any period declared by the Central Government by notification in the Official Gazette as a period of active duty with reference to any area in which any person or class of persons subject to this Act may be serving;
- (b) "battalion" means a unit of the Force constituted as a battalion by the Central Government;
- (c) "Chief Law Officer" and "Law Officer" mean, respectively, the Chief Law Officer and a Law Officer of the Force appointed by the Central Government;
- (d) "civil offence" means an offence which is triable by a criminal court;
- (e) "civil prison" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (9 of 1894) or under any other law for the time being in force;
- (f) "Commandant", when used in any provision of this Act with reference to any unit of the Force, means the officer whose duty it is under the rules to discharge with respect to that unit, the functions of a Commandant in regard to matters of the description referred to in that provision;
- (g) "criminal court" means a court of ordinary criminal justice in any part of India;
- (h) "Deputy Inspector-General" means a Deputy Inspector-General of the Force appointed under section 5;
- (i) "Director-General" means the Director-General of the Force appointed under section 5;
- (j) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to this Act to take action;
- (k) "enrolled person" means an under-officer or other person enrolled under this Act;
- (l) "Force" means the Border Security Force;
- (m) "Force custody" means the arrest or confinement of a member of the Force according to rules;
- (n) "Inspector-General" means the Inspector-General of the Force appointed under section 5;
- (o) "member of the Force" means an officer, a subordinate officer, an under-officer or other enrolled person;
- (p) "notification" means a notification published in the Official Gazette;
- (q) "offence" means any act or omission punishable under this Act and includes a civil offence;
- (r) "officer" means a person appointed or in pay as an officer of the Force, but does not include a subordinate officer or an under-officer;
- (s) "prescribed" means prescribed by rules made under this Act;
- (t) "rule" means a rule made under this Act;
- (u) "Security Force Court" means a Court referred to in section 64;

(v) "subordinate officer" means a person appointed or in pay as a Subedar-Major, a Subedar or a Sub-Inspector of the Force;

(w) "superior officer", when used in relation to a person subject to this Act, means

(i) any member of the Force to whose command such person is for the time being subject in accordance with the rules;

(ii) any officer of higher rank or class or of a higher grade in the same class;

and includes when such person is not an officer, a subordinate officer or an under-officer of higher rank, class or grade;

(x) "under-officer" means a Head Constable, Naik and Lance Naik of the Force;

(y) all words and expressions used and not defined in this Act but defined in the Indian Penal Code (45 of 1860), shall have the meanings assigned to them in that Code.

(2) In this Act, references to any law not in force in the State of Jammu and Kashmir shall be construed as references to the corresponding law in force in that State.

3. *Persons subject to this Act.*—(1) The following persons shall be subject to this Act, wherever they may be, namely:—

(a) officers and subordinate officers; and

(b) under-officers and other persons enrolled under this Act.

(2) Every person subject to this Act shall remain so subject until retired, discharged, released, removed or dismissed from the Force in accordance with the provisions of this Act and the rules.

## CHAPTER II

### CONSTITUTION OF THE FORCE AND CONDITIONS OF SERVICE OF THE MEMBERS OF THE FORCE

4. *Constitution of the Force.*—(1) There shall be an armed force of the Union called the Border Security Force for ensuring the security of the Borders of India.

(2) Subject to the provisions of this Act, the Force shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Force shall be such as may be prescribed.

5. *Control, direction etc.*—(1) The general superintendence, direction and control of the Force shall vest in, and be exercised by, the Central Government and subject thereto, and to the provisions of this Act and the rules, the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director-General of the Force.

(2) The Director-General shall, in the discharge of his duties under this Act, be assisted by such number of Inspectors-General, Deputy Inspectors-General, Commandants and other officers as may be appointed by the Central Government.

6. *Enrolment.*—(1) The persons to be enrolled to the Force, the mode of enrolment, and the procedure for enrolment shall be such as may be prescribed by the Central Government.

(2) Notwithstanding anything contained in this Act and the rules, every person who has, for a continuous period of three months been in receipt of pay as a person enrolled under this Act and borne on the rules of the Force shall be deemed to have been duly enrolled.

**7. Liability for service outside India.**—Every member of the Force shall be liable to serve in any part of India as well as outside India.

**8. Resignation and withdrawal from the post.**—No member of the Force shall be at liberty,—

- (a) to resign his appointment during the term of his engagement; or
  - (b) to withdraw himself from all or any of the duties of his appointment,
- except with the previous permission in writing of the prescribed authority.

**9. Tenure of service under the Act.**—Every person subject to this Act shall hold office during the pleasure of the President.

**10. Termination of service by Central Government.**—Subject to the provisions of this Act and the rules, the Central Government may dismiss or remove from the service any person subject to this Act.

**11. Dismissal, removal or reduction by the Director General and by other officers.**—(1) The Director General or any Inspector-General may dismiss or remove from the service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer.

(2) An officer not below the rank of Deputy Inspector-General or any prescribed officer may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or ranks as may be prescribed:

(3) Any such officer as is mentioned in sub-section (2) may reduce to a lower grade or rank or the ranks any person under his command except an officer or a subordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules.

**12. Certificate of termination of service.**—A subordinate officer, or an under-officer or other enrolled person who is retired, discharged, released, removed or dismissed from the service shall be furnished by the officer, to whose command he is subject, with a certificate in the language which is the mother tongue of such person and also in Hindi or English language setting forth—

- (a) the authority terminating his service;
- (b) the cause for such termination; and
- (c) the full period of his service in the Force.

**13. Restrictions respecting right to form association, freedom of speech, etc.**—(1) No person subject to this Act shall without the previous sanction in writing of the Central Government or of the prescribed authority,—

- (a) be a member of, or be associated in any way with any trade union, labour union, political association or with any class of trade unions, labour unions or political associations; or
- (b) be a member of, or be associated in any way with, any society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

- (c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

**Explanation.**—If any question arises as to whether any

society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(2) No person subject to this Act shall participate in or address, any meeting or take part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be prescribed.

### CHAPTER III

### OFFENCES

**14. Offences in relation to the enemy and punishable with death.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend; or
- (b) intentionally uses any means to compel or induce any person subject to this Act or to military, naval or air force law to abstain from acting against the enemy or to discourage such person from acting against the enemy; or
- (c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment of misbehaves in such manner as to show cowardice; or
- (d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or
- (e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies or in any other manner whatsoever; or
- (f) in time of active operation against the enemy, intentionally occasions a false alarm in action, camp, quarters, or spreads or causes to be spread reports calculated to create alarm or despondency; or
- (g) in time of action leaves his Commandant or other superior officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or
- (h) having been captured by the enemy or made prisoner of war, voluntarily serves with or aids the enemy; or
- (i) knowingly harbours or protects an enemy not being a prisoner; or
- (j) being a sentry in time of active operation against the enemy or alarm, sleeps upon his post or is intoxicated; or
- (k) knowingly does any act calculated to imperil the success of the Force or the military, naval or air forces of India or any forces co-operating therewith or any part of such forces.

shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

**15. Offences in relation to the enemy and not punishable with death.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is taken prisoner or captured by the enemy, by want of due precaution or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner or so captured fails to rejoin service when able to do so; or



- (b) without due authority holds correspondence with, or communicates intelligence to, the enemy or any person in league with the enemy or having come by the knowledge of any such correspondence or communication, wilfully omits to discover it immediately to his Commandant or other superior officer.

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

16. *Offences punishable more severely on active duty than at other times.*—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) forces a safeguard, or forces or uses criminal force to a sentry; or
- (b) breaks into any house or other place in search of plunder; or
- (c) being a sentry sleeps upon his post, or is intoxicated; or
- (d) without order from his superior officer leaves his guard, picket, patrol or post; or
- (e) intentionally or through neglect occasions a false alarm in camp or quarters, or spreads or causes to be spread reports calculated to create unnecessary alarm or despondency; or
- (f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received,

shall, on conviction by a Security Force Court,—

- (A) if he commits any such offence when on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and
- (B) if, he commits any such offence when not on active duty, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

17. *Mutiny.*—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air forces of India or any forces co-operating therewith; or
- (b) joins in any such mutiny; or
- (c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or
- (d) knowing or having reason to believe in the existence of any such mutiny or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or
- (e) endeavours to seduce any person in the Force or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union.

shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

18. *Desertion and aiding desertion.*—(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Security Force Court,—

- (a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and
- (b) if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

19. *Absence without leave.*—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) absents himself without leave; or
- (b) without sufficient cause overstays leave granted to him; or
- (c) being on leave of absence and having received information from the appropriate authority that any battalion or part thereof or any other unit of the Force, to which he belongs, has been ordered on active duty, fails, without sufficient cause, to rejoin without delay; or
- (d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
- (e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or
- (f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or
- (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

20. *Striking or threatening superior officers.*—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) uses criminal force to or assaults his superior officer; or
- (b) uses threatening language to such officer; or
- (c) uses insubordinate language to such officer;

shall, on conviction by a Security Force Court,—

- (A) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B) in other cases, be liable to suffer imprisonment for

a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

**21. Disobedience to superior officer.**—(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by a Security Force Court,—

- (a) if he commits such offence when on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and
- (b) if he commits such offence when not on active duty, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

**22. Insubordination and obstruction.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or
- (b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or
- (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
- (d) breaks out of barracks, camp or quarters; or
- (e) neglects to obey any general, local or other order; or
- (f) impedes the Force Police referred to in section 63 or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a Force Police or any person lawfully acting on his behalf,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e), to two years, and in the case of the offences specified in the other clauses, to ten years, or in either cases such less punishment as is in this Act mentioned.

**23. False answers on enrolment.**—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

**24. Certain forms of disgraceful conduct.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

**25. Ill-treating a subordinate.**—Any officer, subordinate officer or under-officer, who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

**26. Intoxication.**—Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

**27. Permitting escape of person in custody.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) when in command of a guard, picket, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or
  - (b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard,
- shall, on conviction by a Security Force Court, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned, and if he has not acted wilfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

**28. Irregularity in connection with arrest or confinement.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) un-necessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or
- (b) having committed a person to Force custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to one year or such less punishment as is in this Act mentioned.

**29. Escape from custody.**—Any person subject to this Act, who, being in lawful custody escapes or attempts to escape, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

**30. Offences in respect of property.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits theft of any property belonging to the Government or to any Force mess, band or institution, or to any person subject to this Act; or
- (b) dishonestly misappropriates or converts to his own use any such property; or
- (c) commits criminal breach of trust in respect of any such property; or
- (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or
- (e) wilfully destroys or injures any property of the Government entrusted to him; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person.

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

**31. Extortion and corruption.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits extortion; or
- (b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

**32. Making away with equipment.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or
- (b) loses by neglect anything mentioned in clause (a); or
- (c) sells, pawns, destroys or defaces any medal or decoration granted to him,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clause (a), to ten years, and in the case of the offences specified in the other clauses, to five years, or in either case such less punishment as is in this Act mentioned.

**33. Injury to property.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) destroys or injures any property mentioned in clause (a) of section 32, or any property belonging to any Force mess, band or institution, or to any person subject to this Act; or
  - (b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or
  - (c) kills, injures, makes away with, ill-treats or loses any animal entrusted to him,
- shall, on conviction by a Security Force Court, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse, to suffer imprisonment for a term

which may extend to five years or such less punishment as is in this Act mentioned.

**34. False accusations.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or
- (b) in making a complaint against any person subject to this Act makes any statement affecting the character of such person, knowing or having reason to believe such statement to be false, or knowingly and wilfully suppresses any material facts,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

**35. Falsifying official documents and false declarations.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) in any report, return, list, certificate book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or
- (b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any emissions, with intent to defraud; or
- (c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or
- (d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or
- (e) obtains for himself, or for any other person any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

**36. Signing in blank and failure to report.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or
  - (b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send,
- shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

**37. Offences relating to Security Force Court.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being duly summoned or ordered to attend as a witness before a Security Force Court, wilfully or without reasonable excuse, makes default in attending; or
- (b) refuses to take an oath or make an affirmation legally required by a Security Force Court to be taken or made; or
- (c) refuses to produce or deliver any document in his power or control legally required by a Security Force Court to be produced or delivered by him; or
- (d) refuses, when a witness, to answer any question which he is by law bound to answer; or
- (e) is guilty of contempt of the Security Force Court by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court.

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

**38. False evidence.**—Any person subject to this Act who, having been duly sworn or affirmed before any Security Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

**39. Unlawful detention of pay.**—Any officer, subordinate officer or an under-officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

**40. Violation of good order and discipline.**—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

**41. Miscellaneous offences.**—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or tres pass, fails to have due reparation made to the injured person or to report the case to the proper authority; or
- (b) by defiling any place of worship, or otherwise intentionally insults the religion, or wounds the religious feelings of, any person, or
- (c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or
- (d) being below the rank of subordinate officer, when off duty, appears without proper authority, in or about camp, or in or about, or when going to, or returning from, any town or bazaar, carrying

a rifle sword, or other offensive weapon; or

- (e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or
- (f) commits any offence against the property or person of any inhabitant of, or resident in the country in which he is serving.

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

**42. Attempt.**—Any person subject to this Act who attempts to commit any of the offences specified in sections 14 to 41 (both inclusive) and in such attempt does any act towards the commission of the offence shall, on conviction by a Security Force Court, where no express provision is made by this Act for the punishment of such attempt, be liable,—

- (a) if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and
- (b) if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

**43. Abetment of offences that have been committed.**—Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

**44. Abetment of offences punishable with death and not committed.**—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 14, 17 and sub-section (1) of section 18 shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

**45. Abetment of offences punishable with imprisonment and not committed.**—Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) and punishable with imprisonment shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

**46. Civil offences.**—Subject to the provisions of section 47 any person subject to this Act who at any place, in or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a Security Force Court and, on conviction, be punishable as follows, that is to say,—

- (a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and
- (b) in any other case, he shall be liable to suffer any punishment, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

**47. Civil offences not triable by a Security Force Court.**—A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Security Force Court unless he commits any of the said offences,—

- (a) while on active duty; or
- (b) at any place outside India; or
- (c) at any place specified by the Central Government by notification in this behalf.

#### CHAPTER IV PUNISHMENTS

**48. Punishments awardable by Security Force Courts.**—(1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following that is to say,—

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody;
- (c) dismissal from the service;
- (d) imprisonment for a term not exceeding three months in Force custody;
- (e) reduction to the ranks or to a lower rank or grade or place in the list of their rank in the case of an under-officer;
- (f) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;
- (g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (h) fine, in respect of civil offences;
- (i) severe reprimand or reprimand except in the case of persons below the rank of an under-officer;
- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;
- (k) forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;
- (l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence for which he is convicted is made good.
- (2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

**49. Alternative punishments awardable by Security Force Courts.**—Subject to the provisions of this Act, a Security Force Court may, on convicting a person

subject to this Act of any of the offences specified in sections 14 to 45 (both inclusive) award either the particular punishment with which the offence is stated in the said sections to be punishable or; in lieu thereof, any one of the punishments lower in the scale set out in section 48 regard being had to the nature and degree of the offence.

**50. Combination of punishments.**—A sentence of a Security Force Court may award in addition to, or without any one other punishment, the punishment specified in clause (c) of sub-section (1) of section 48, and any one or more of the punishments specified in clauses (e) to (l) (both inclusive) of that sub-section.

**51. Retention in the Force of a person convicted on active duty.**—When on active duty any enrolled person has been sentenced by a Security Force Court to dismissal or to imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of imprisonment if any.

**52. Punishments otherwise than by Security Force Courts.**—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a Security Force Court in the manner stated in sections 53 and 55.

**53. Minor punishments.**—Subject to the provisions of section 54, a Commandant or such other officer as is, with the consent of Central Government, specified by the Director-General may, in the prescribed manner, proceed against a person subject to this Act, otherwise than as an officer or a subordinate officer, who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

- (a) imprisonment in Force custody up to twenty-eight days;
- (b) detention up to twenty-eight days;
- (c) confinement to the lines up to twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of any special position or special emoluments or any acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen days' pay in any one month;
- (i) deductions from his pay of any sum required to make good such compensation for any expense, loss, damage or destruction caused by him to the Central Government, or to any building or property as may be awarded by his Commandant.

**54. Limit of punishments under section 53.**—(1) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of section 53 the punishments specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

(2) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(3) The punishments specified in the said clauses (a), (b) and (c) shall not be awarded to any person who is of the rank of an under-officer or was, at the time of committing the offence for which he is punished, of such rank.

(4) The punishment specified in clause (g) of section 53 shall not be awarded to any person below the rank of an under-officer.



55.—(1) *Punishment of persons of and below the rank of sub-ordinate officers by Deputy Inspectors, General and others.* An officer not below the rank of the Deputy Inspector-General or such other officer as is, with the consent of the Central Government, specified by the Director-General may, in the prescribed manner, proceed against a person of or below the rank of a subordinate officer who is charged with an offence under this Act and award one or more of the following punishments, that is to say,—

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon the length of service forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a Security Force Court;

(b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

(2) In every case in which punishment has been awarded under sub-section (1), certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment to the prescribed superior authority who may, if the punishment awarded appears to him to be illegal, unjust or excessive, cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

56. *Collective fines.*—(1) Whenever any weapon or part of a weapon, or ammunition, forming part of the equipment of a unit of the Force, is lost or stolen, an officer not below the rank of the Commandant of a battalion may, after making such enquiry as he thinks fit and subject to the rules, impose a collective fine upon the subordinate officers, under-officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

#### CHAPTER V

### ARREST AND PROCEEDINGS BEFORE TRIAL

57. *Custody of offenders.*—(1) Any person subject to this Act who is charged with an offence may be taken into Force custody, under the order of any superior officer.

(2) Notwithstanding anything contained in sub-section (1), an officer may order into Force custody any other officer, though such other officer may be of a higher rank, engaged in a quarrel, affray or disorder.

58. *Duty of Commandant in regard to detention.*—(1) It shall be the duty of every Commandant to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service.

(2) The case of every person being detained in custody beyond a period of forty-eight hours, and the reasons therefor, shall be reported by the Commandant to the Deputy Inspector-General under whom he is serving or such other officer to whom an application may be made to convene a Security Force Court for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in Force custody, pending the trial by any competent authority for any offence committed by him.

59. *Interval between committal and trial.*—In every case where any such person as is mentioned in section 57 and as is not on active duty, remains in such custody for a longer period than eight days without a Security Force Court for his trial being convened, a special report giving reasons for the delay shall be made by his Commandant in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a Security Force Court is convened or such person is released from custody.

60. *Arrest by Civil authorities.*—Whenever any person subject to this Act, who is accused of an offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to Force custody of such person upon receipt of a written application to that effect signed by his Commandant or an officer authorised by the Commandant in that behalf.

61. *Capture of deserters.*—(1) Whenever any person subject to this Act deserts, the Commandant of the unit to which he belongs, shall give information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into Force custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

62. *Inquiry into absence without leave.*—(1) When any person subject to this Act has been absent from duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be appointed by such authority and in such manner as may be prescribed; and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof and the said deficiency, if any, and the Commandant of the unit to which the person belongs shall make a record thereof in the prescribed manner.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall for the purposes of this Act, be deemed to be a deserter.

63. *Force police officers.*—(1) The Director-General or any prescribed officer may appoint persons (in this Act referred to as Force police) for discharging the functions specified in sub-sections (2) and (3).

(2) The duties of a person appointed under sub-section (1), are to take charge of persons confined for any offence, to preserve good order and discipline and to prevent breaches of the same by persons serving in, or attached to, the Force.

(3) Notwithstanding anything contained in section 57, a person appointed under sub-section (1) may, at any time, arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of a sentence awarded by a Security Force Court or by an officer exercising authority under section 53 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

## CHAPTER VI

### SECURITY FORCE COURTS

64. *Kinds of Security Force Courts.*—For the purposes of this Act there shall be three kinds of Security Force Courts, that is to say,—

- (a) General Security Force Courts;
- (b) Petty Security Force Courts; and
- (c) Summary Security Force Courts.

65. *Power to convene a General Security Force Court.*—A General Security Force Court may be convened by the Central Government or the Director-General or by any officer empowered in this behalf by warrant of the Director-General.

66. *Power to convene a Petty Security Force Court.*—A Petty Security Force Court may be convened by an officer having power to convene a General Security Force Court or by an officer empowered in this behalf by warrant of any such officer.

67. *Contents of warrants issued under sections 65 and 66.*—A warrant, issued under section 65 or section 66 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

68. *Composition of General Security Force Court.*—A General Security Force Court shall consist of not less than five officers, each of whom has held the post of Deputy Superintendent of Police for not less than three whole years and of whom not less than four are of a rank not below that of a confirmed Deputy Superintendent of Police.

*Explanation.*—For the purposes of this section and section 69 "Deputy Superintendent of Police" includes any post of a higher rank and any post declared by Central Government by notification to be an equivalent post as also any post higher in rank than the post so declared.

69. *Composition of a Petty Security Force Court.*—A Petty Security Force Court shall consist of not less than three officers each of whom has held the post of Deputy Superintendent of Police for not less than two whole years.

70. *Summary Security Force Court.*—(1) A Summary Security Force Court may be held by the Commandant of any unit of the Force and he alone shall constitute the Court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or subordinate officers or one of either, and who shall not as such, be sworn or affirmed.

71. *Dissolution of a Security Force Court.*—(1) If a Security Force Court after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of the illness of the Law Officer or of the accused before the finding, it is impossible to continue the trial, a Security Force Court shall be dissolved.

(3) The officer who convened a Security Force Court may dissolve the same if it appears to him that the

exigencies of the service or necessities of discipline render it impossible or inexpedient to continue the said Security Force Court.

(4) Where a Security Force Court is dissolved under this section, the accused may be tried again.

72. *Powers of a General Security Force Court.*—A General Security Force Court shall have the power to try any person subject to this Act for any offence punishable thereunder and to pass any sentence authorised thereby.

73. *Powers of a Petty Security Force Court.*—A Petty Security Force Court shall have power to try any person subject to this Act other than an officer or a subordinate officer for any offence made punishable thereunder and to pass any sentence authorised by this Act other than a sentence of death, or imprisonment for a term exceeding two years.

74. *Powers of a Summary Security Force Court.*—(1) Subject to the provisions of sub-section (2), a Summary Security Force Court may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the sections 14, 17 and 46 of this Act, or any offence against the officer holding the court.

(3) A Summary Security Force Court may try any person subject to this Act and under the command of the officer holding the court, except an officer, or a subordinate officer.

(4) A Summary Security Force Court may pass any sentence which may be passed under this Act, except the sentence of death or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be,—

(a) one year, if the officer holding the Security Force Court has held either the post of Superintendent of Police or a post declared by the Central Government by notification to be equivalent thereto, for a period of not less than three years or holds a post of higher rank than either of the said posts; and

(b) three months, in any other case.

75. *Prohibition of second trial.*—(1) When any person subject to this Act has been acquitted or convicted of an offence by a Security Force Court or by a criminal court or has been dealt with under section 53 or under section 55, he shall not be liable to be tried again for the same offence by a Security Force Court or dealt with under the said sections.

(2) When any person, subject to this Act, has been acquitted or convicted of an offence by a Security Force Court or has been dealt with under section 53 or section 55, he shall not be liable to be tried again by a criminal court for the same offence or on the same facts.

76. *Period of limitation for trial for an offence of desertion in certain cases.*—No trial for an offence of desertion, other than desertion on active duty, shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any unit of the Force.

77. *Trial, etc., of offender who ceases to be subject to this Act.*—(1) Where an offence under this Act had been

committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in Force custody and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act:

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or for any of the offences mentioned in section 17 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a Security Force Court.

**78. Application of Act during term of sentence.**—When a person subject to this Act is sentenced by a Security Force Court to imprisonment, this Act shall apply to him during the term of his sentence, though he is dismissed from the Force, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(2) When a person subject to this Act is sentenced by a Security Force Court to death, this Act shall apply to him till the sentence is carried out.

**79. Place of trial.**—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

**80. Choice between criminal court and Security Force Court.**—When a criminal court and a Security Force Court have each jurisdiction in respect of an offence, it shall be in the discretion of the Director-General, or the Inspector General or the Deputy Inspector-General within whose command the accused person is serving or such other officer as may be prescribed, to decide before which court the proceedings shall be instituted, and, if that officer decides that they shall be instituted before a Security Force Court, to direct that the accused person shall be detained in Force custody.

**81. Power of criminal court to require delivery of offender.**—(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 80 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings, pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted, for the determination of the Central Government whose order upon such reference shall be final.

## CHAPTER VII

### PROCEDURE OF SECURITY FORCE COURTS

**82. Presiding officer.**—At every General Security Force Court or Petty Security Force Court, the senior member shall be the presiding officer.

**83. Law Officers.**—Every General Security Force Court shall, and every Petty Security Force Court may, be attended by a Law Officer, or if no such officer is available, an officer approved by the Chief Law Officer, or a Law Officer.

**84. Challenges.**—(1) At all trials by a General Security Force Court or by a Petty Security Force Court, as soon as the Court is assembled, the names of the presiding officer and members shall be read over to the

accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to such officer, his objection and also the reply thereto of the officer objected to shall be heard and recorded, and the remaining officers of the Court, shall in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner, by another officer subject to the same right of the accused to object.

(4) When no challenge is made, or when a challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

**85. Oaths of members Law Officer and witness.**—

(1) An oath or affirmation in the prescribed manner shall be administered to every member of every Security Force Court and to the Law Officer or as the case may be the officer approved under section 83, before the commencement of the trial.

(2) Every person giving evidence before a Security Force Court shall be examined after being duly sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the Security Force Court is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

**86. Voting by members.**—(1) Subject to the provisions of sub-sections (2) and (3), every decision of a Security Force Court shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a General Security Force Court without the concurrence of at least two-thirds of the members of the Court.

(3) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

**87. General rule as to evidence.**—The Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a Security Force Court.

**88. Judicial notice.**—A Security Force Court may take judicial notice of any matter within the general knowledge of the members as officers of the Force.

**89. Summoning witnesses.**—(1) The convening officer, the presiding officer of a Security Force Court, the Law Officer or, as the case may be, the officer approved under section 83 or the Commandant of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness who is subject to this Act, the summons shall be sent to his Commandant and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be, or resides, and such magistrate shall give effect to the summons as if the witness were required in the court of such a magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

**90. Documents exempted from production.—**(1) Nothing in section 89 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Sessions, wanted for the purpose of any Security Force Court, such magistrate, or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate, or Court may direct.

(3) If any document is, in the opinion of any other magistrate or any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause such search to be made for, and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or High Court or Court of Sessions.

**91. Commissions for examination of witnesses.—**(1) Whenever, in the course of a trial by a Security Force Court, it appears to the Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Chief Law Officer in order that a commission to take the evidence of such witness may be issued.

(2) The Chief Law Officer may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the trials of warrant-cases under the Code of Criminal Procedure, 1898 (5 of 1898).

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898 (5 of 1898).

**92. Examination of a witness on commission.—**(1) The prosecutor and the accused person in any case in which a commission is issued under section 91 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the Magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such Magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 91 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Chief Law Officer.

(4) On receipt of a Commission, and deposition returned under sub-section (3), the Chief Law Officer shall

forward the same to the court at whose instance the commission was issued or if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 91, the trial may be adjourned for specified time reasonably sufficient for the execution and return of the commission.

**93. Conviction of offence not charged.—**(1) A person charged before a Security Force Court with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a Security Force Court with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a Security Force Court with using criminal force may be found guilty of assault.

(4) A person charged before a Security Force Court with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a Security Force Court with any one of the offences specified in clauses (a), (b), (c) and (d) of section 30 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a Security Force Court with an offence punishable under section 46 may be found guilty of any other offence of which he might have been found guilty, if the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) were applicable.

(7) A person charged before a Security Force Court with any offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a Security Force Court with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

**94. Presumption as to signatures.—**In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall be on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

**95. Enrolment paper.—**(1) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

**96. Presumption as to certain documents.—**(1) A letter return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any unit of the Force or respecting the circumstances of any person not having served in, or belonged to, any unit of the Force, if purporting to be

signed by or on behalf of the Central Government or the Director General, or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) A Border Security Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, subordinate officers therein mentioned, and of any appointment held by them and of the battalion, unit, or branch of the Force to which they belong.

(3) Where a record is made in any battalion book in pursuance of this Act or of any rules made thereunder or otherwise in the discharge of official duties, and purports to be signed by the Commandant or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any battalion book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any unit of the Force, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the Commandant of the unit to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report, may be used as evidence in any proceeding under this Act.

#### 97. Reference by accused to Government Officer.—

(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the accused person states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annual the proceedings and order afresh trial.

98. Evidence of previous convictions and general character.—(1) When any person subject to this Act has been convicted by a Security Force Court of any

offence, such Security Force Court may inquire into, and receive, and record evidence of any previous convictions of such person, either by a Security Force Court or by a criminal Court, or any previous award of punishment under section 53 or 55, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, books of Security Force Courts or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a Summary Security Force Court, the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

99. Lunacy of accused.—(1) Whenever, in the course of a trial by a Security Force Court, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court, or, in the case of a Summary Security Force Court, the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 115, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another Security Force Court for the offence with which he was charged.

(4) The authority to whom the finding of a Summary Security Force Court is reported under sub-section (2), and a confirming officer confirming the finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

100. Subsequent fitness of lunatic accused for trial.—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 99, any officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (4) of section 99, on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section (5) of section 99, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section, on a certificate of any two or more of the visitors of such asylum and if he is detained in any other place under that sub-section, on a certificate of the prescribed authority.



that he is capable of making his defence, take steps to have such person tried by the same or another Security Force Court for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

**101. Transmission to Central Government of orders under section 100.**—A copy of every order made by an officer under section 100 for the trial of the accused shall forthwith be sent to the Central Government.

**102. Release of lunatic accused.**—Where any person is in custody under sub-section (4) of section 99 or under detention under sub-section (5) of that section,—

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer; or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 100 that in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person,

the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

**103. Delivery of lunatic accused to relatives.**—Where any relative or friend of any person who is in custody under sub-section (4) of section 99 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may, upon application by such relative or friend and, on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of, and, prevented from doing injury to himself or to any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

**104. Order for custody and disposal of property pending trial.**—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a Security Force Court during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

**105. Order for disposal of property regarding which offence is committed.**—(1) After the conclusion of a trial before any Security Force Court, the court or the officer confirming the finding or sentence of such Security Force Court, or any authority, superior to such officer, or, in the case of a Summary Security Force Court whose finding or sentence does not require confirmation, an officer not below the rank of Deputy Inspector-General within whose command the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may,

whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

**106. Powers of Security Force Court in relation to proceedings under this Act.**—Any trial by a Security Force Court under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Security Force Court shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

## CHAPTER VIII

### CONFIRMATION AND REVISION

**107. Finding and sentence not valid, unless confirmed.**—No finding or sentence of a General Security Force Court or a Petty Security Force Court shall be valid except so far as it may be confirmed as provided by this Act.

**108. Power to confirm finding and sentence of General Security Force Court.**—The findings and sentences of General Security Force Courts may be confirmed by the Central Government or by any officer empowered in this behalf by warrant of the Central Government.

**109. Power to confirm finding and sentence of Petty Security Force Court.**—The findings and sentences of Petty Security Force Courts may be confirmed by an officer having power to convene a General Security Force Court or by any officer empowered in this behalf by warrant of such officer.

**110. Limitation of powers of confirming authority.**—A warrant issued under section 108 or section 109 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

**111. Power of confirming authority to mitigate, remit or commute sentences.**—(1) Subject to such restrictions, reservations or conditions, as may be contained in any warrant issued under section 108 or section 109, a confirming authority may, when confirming the sentence of a Security Force Court, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 48.

**112. Confirming of findings and sentences on board a ship.**—When any person subject to this Act is tried and sentenced by a Security Force Court while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

**113. Revision of finding or sentence.**—(1) Any finding or sentence of a Security Force Court which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was

passed, unless any of those officers are unavoidably absent.

(3) in case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a General Security Force Court, it still consists of five officers, or, if a Petty Security Force Court, of three officers.

**114. Finding and sentence of a Summary Security Force Court.**—(1) Save as otherwise provided in sub-section (2), the finding and sentence of a Summary Security Force Court shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of the rank of superintendent of Police or of a rank declared under clause (a) of sub-section (5) of section 74 as equivalent thereto or of a lower rank and has held such rank for less than five years, he shall not, except on active duty, carry into effect any sentence, until it has received the approval of an officer not below the rank of Deputy Inspector-General.

**115. Transmission of proceedings of Summary Security Force Courts.**—The proceedings of every Summary Security Force Court shall, without delay, be forwarded to the officer not below the rank of Deputy Inspector General within whose command the trial was held, or to the prescribed officer, and such officer, or the Director-General or any officer empowered by him in this behalf may, for reasons based on the merits of the case, but not on merely technical grounds, set aside the proceedings, or reduce the sentence to any other sentence which the court might have passed.

**116. Alteration of finding of sentence in certain cases.**—

(1) Where a finding of guilty by a Security Force Court, which has been confirmed or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 128 to commute the punishment awarded by the sentence, if the finding had been valid may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that such substitution shall be made unless such finding could have been validly made by the Security Force Court on the charge and unless it appears that the Security Force Court must have been satisfied of the facts establishing the said offence.

(2) Where a sentence passed by a Security Force Court which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules, have effect as if it were a finding or sentence, as the case may be, of a Security Force Court.

**117. Remedy against order, finding or sentence of Security Force Court.**—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or authority empowered to confirm any finding or sentence of such Security Force Court, and

the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit.

**118. Annulment of proceedings.**—The Central Government, the Director-General, or any prescribed officer may annul the proceedings of any Security Force Court on the ground that they are illegal or unjust.

## CHAPTER IX

### EXECUTION OF SENTENCE, PARDONS, REMISSIONS, ETC.

**119. Form of sentence of death.**—In awarding a sentence of death, a Security Force Court shall, in its discretion direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

**120. Commencement of sentence of imprisonment.**—Whenever any person is sentenced by a Security Force Court under this Act to imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer, or in the case of a Summary Security Force Court, by the court.

**121. Execution of sentence of imprisonment.**—(1) Whenever any sentence of imprisonment is passed under this Act by a Security Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Security Force Court the officer holding the court or such other officer as may be prescribed shall, save as otherwise provided in sub-sections (3) and (4) direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1) the Commandant of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Security Force Court, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector-General within whose command the person sentenced is serving or any prescribed officer, may from time to time appoint.

**122. Temporary custody of offenders.**—Where a sentence of imprisonment is directed to be undergone in a civil prison the offender may be kept in Force custody or in any other fit place, till such time as it is possible to send him to a civil prison.

**123. Execution of sentence of imprisonment in special cases.**—Whenever, in the opinion of an officer not below the rank of Deputy Inspector General within whose

command the trial is held, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in Force custody, in accordance with the provisions of section 121, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

**124. Conveyance of prisoner from place to place.**—A person under sentence of imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

**125. Communication of certain orders to prison officers.**—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed, to the officer in charge of the prison in which such person is confined.

**126. Execution of sentence of fine.**—When a sentence of fine is imposed by a Security Force Court under section 46, a copy of such sentence signed and certified by the confirming officer, or where no confirmation is required by the officer holding the trial may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, as if it were a sentence of fine imposed by such magistrate.

**127. Informality or error in the order or warrant.**—Whenever any person is sentenced to imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of informality or error in, or as respects, the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into, or, is confined in any such place, and any such order, warrant or document may be amended accordingly.

**128. Pardon and remission.**—When any person subject to this Act has been convicted by a Security Force Court of any offence, the Central Government or the Director-General or, in the case of a sentence, which he could have confirmed or which did not require confirmation, an officer not below the rank of Deputy Inspector-General within whose command such person at the time of conviction was serving, or the prescribed officer may,

- (a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or
- (b) mitigate the punishment awarded; or
- (c) commute such punishment for any less punishment or punishments mentioned in this Act;
- (d) either with or without conditions which the person sentenced accepts, release the person on parole.

**129. Cancellation of conditional pardon, release on parole or remission.**—(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the

pardon release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the un-expired portion of his sentence.

**130. Suspension of sentence of imprisonment.**—(1) Where a person subject to this Act is sentenced by a Security Force Court to imprisonment, the Central Government, the Director-General or any officer empowered to convene a General Security Force Court may suspend the sentence whether or not the offender has already been committed to prison or to Force custody.

(2) The authority or officer specified in sub-section (1) may, in the case of an offender so sentenced direct that until the orders of such authority or officer have been obtained, the offender shall not be committed to prison or to Force custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

**131. Orders pending suspension.**—(1) Where the sentence referred to in section 130 is imposed by a Security Force Court other than a Summary Security Force Court, the confirming officer may, when confirming the sentence, direct that the offender be not committed to prison or to Force custody until the orders of the authority or officer specified in section 130, have been obtained.

(2) Where a sentence of imprisonment is imposed by a Summary Security Force Court, the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 114 may make the direction referred to in sub-section (1).

**132. Release on suspension.**—Where a sentence is suspended under section 130, the offender shall forthwith be released from custody.

**133. Computation of period of suspension.**—Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

**134. Order after suspension.**—The authority or officer specified in section 130 may, at any time while a sentence is suspended, order—

- (a) that the offender be committed to undergo the un-expired portion of the sentence; or
- (b) that the sentence be remitted.

**135. Reconsideration of case after suspension.**—(1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 130, or by any officer not below the rank of a Deputy Inspector-General duly authorised by the authority or officer specified in section 130.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 130.

**136. Fresh sentence after suspension.**—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

- (a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;
- (b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to

prison or Force custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and

- (c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 134 or section 135 continue to be suspended.

137. *Scope of power of suspension.*—The powers conferred by sections 130 and 134 shall be in addition to, and not in derogation of, the power of mitigation, remission and commutation.

138. *Effect of suspension and remission on dismissal.*—

(1) Where in addition to any other sentence the punishment of dismissal has been awarded by a Security Force Court, and such other sentence is suspended under section 130, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 130.

(2) If such other sentence is remitted under section 134, the punishment of dismissal shall also be remitted.

## CHAPTER X MISCELLANEOUS

139. *Powers and duties conferable and imposable on members of the Force.*—(1) The Central Government may, by general or special order published in the Official Gazette direct that, subject to such conditions and limitations, and within the local limits of such area adjoining the orders of India, as may be specified in the order, any member of the Force may,—

(i) for the purpose of prevention of any offence punishable under the Passport (Entry into India) Act, 1920 (34 of 1920) the Registration of Foreigners Act, 1939 (16 of 1939), the Central Excises and Salt Act, 1944 (1 of 1944), the Foreigners Act, 1946 (31 of 1946), the Foreign Exchange Regulation Act, 1947 (7 of 1947), the Customs Act, 1962 (52 of 1962), or the passports Act, 1967 (15 of 1967) or of any cognizable offence punishable under any other Central Act; or

(ii) for the purpose of apprehending any person who has committed any offence referred to in clause (i), exercise or discharge such of the powers or duties under that Act or any other Central Act as may be specified in the said order, being the powers and duties which, in the opinion of the Central Government, an officer of the corresponding or lower rank is by that or such other Act empowered to exercise or discharge for the said purposes.

(2) The Central Government may, by general or special order published in the Official Gazette, confer or impose, with the concurrence of the State Government concerned, any of the powers or duties which may be exercised or discharged under a State Act by a police officer upon a member of the Force who, in the opinion of the Central Government, holds a corresponding or higher rank.

(3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as

the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously under that order.

140. *Protection for acts of members of the Force.*—

(1) In any suit or proceeding against any member of the Force for any act done by him in pursuance of a warrant or order of a competent authority, it shall be lawful for him to plead that such act was done by him under the authority of such warrant or order.

(2) Any such plea may be proved by the production of the warrant or order directing the act, and if it is so proved the member of the Force shall thereupon be discharged from liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding (whether civil or criminal) which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of any provision of this Act or the rules, shall be commenced within three months after the act complained of was committed and not otherwise, and notice in writing of such proceeding and of the cause thereof shall be given to the defendant or his superior officer, at least one month before the commencement of such proceeding.

141. *Power to make rules.*—(1) The Central Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—

- (a) the constitution, governance, command and discipline of the Force;
- (b) the enrolment of persons to the Force and the recruitment of other members of the Force;
- (c) the conditions of service (including deductions from pay and allowances) of members of the Force;
- (d) the rank, precedence, powers of command and authority of the officers, subordinate officers, under-officers and other persons subject to the Act;
- (e) the removal, retirement, release or discharge from the service of persons subject to this Act;
- (f) the purposes and other matters required to be prescribed under section 13;
- (g) the convening, constitution, adjournment, dissolution and sittings of Security Force Courts, the procedure to be observed in trials by such courts, the persons by whom an accused may be defended in such trials and the appearance of such persons thereto;
- (h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of Security Force Courts;
- (i) the forms or orders to be made under the provisions of this Act relating to Security Force Courts and the awards and infliction of death, imprisonment and detention;
- (j) the carrying into effect of sentences of security Force Courts;
- (k) any matter necessary for the purpose of carrying this Act into execution, as far as it relates to the investigation, arrest, custody, trial and punishment of offences triable or punishable under this Act;
- (l) the ceremonials to be observed and marks of respect to be paid in the Force;

- (m) the convening of, the constitution, procedure and practice of, Courts of inquiry, the summoning of witnesses before them and the administration of oaths by such Courts;
- (n) the recruitment and conditions of service of the Chief Law Officer and the Law Officers;
- (o) any other matter which is to be, or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything done under that rule.

#### 142. Provisions as to existing Border Security Force.—

(1) The Border Security Force in existence at the commencement of this Act shall be deemed to be the Force constituted under this Act.

(2) Members of the Border Security Force in existence at the commencement of this Act shall be deemed to have been appointed or as the case may be, enrol as such under this Act.

(3) Anything done or any action taken before the commencement of this Act in relation to the constitution of the Border Security Force referred to in sub-section (1), in relation to any person appointed or enrolled, as the case may be, thereto, shall be as valid and as effective in law as if such thing or action was done or taken under this Act:

Provided that nothing in this sub-section shall render any person guilty of any offence in respect of anything done or omitted to be done by him before the commencement of this Act.

### LAW DEPARTMENT NOTIFICATION

Simla-2, the 8th December, 1970

No. 12-22/70-LR.—The Patents Act, 1970 (39 of 1970) recently passed by the Parliament which has already been published in the Gazette of India Extraordinary, Part II, section I, is hereby republished in the Himachal Pradesh Government Rajpatra for the information of general public.

JOSEPH DINA NATH,  
Under Secretary (Judicial).

Assented to on 19-9-70.

### THE PATENTS ACT, 1970 (ACT NO. 39 OF 1970)

#### AN ACT

to amend and consolidate the law relating to patents.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

### CHAPTER I PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Patents Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. *Definitions and interpretation.*—(1) In this Act, unless the context otherwise requires,—

- (a) "assignee" includes the legal representative of a deceased assignee, and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;
- (b) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;
- (c) "convention application" means an application for a patent made by virtue of section 135;
- (d) "convention country" means a country notified as such under sub-section (1) of section 133;
- (e) "district court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 (5 of 1908);
- (f) "exclusive licence" means a licence from a patentee which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and "exclusive licensee" shall be construed accordingly;
- (g) "food" means any article of nourishment and includes any substance intended for the use of babies, invalids or convalescents as an article of food or drink;
- (h) "Government undertaking" means any industrial undertaking carried on—
  - (i) by a department of the Government, or
  - (ii) by a corporation established by a Central, Provincial or State Act, which is owned or controlled by the Government, or
  - (iii) by a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956),

and includes the Council of Scientific and Industrial Research and any other institution which is financed wholly or for the major part by the said Council;

(i) "High Court" means,—

- (i) in relation to the Union territory of Delhi and the Union territory of Himachal Pradesh, the High Court of Delhi;
- (ii) in relation to the Union territory of Manipur and the Union territory of Tripura, the High Court of Assam;
- (iii) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta;
- (iv) in relation to the Union territory of the Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala;
- (v) in relation to the Union territory of Goa, Daman and Diu and the Union territory of Dadra and Nagar Haveli, the High Court at Bombay;
- (vi) in relation to the Union territory of Pondicherry, the High Court at Madras;
- (vii) in relation to the Union territory of Chandi-



garh, the High Court of Punjab and Haryana; and

(viii) in relation to any other State, the High Court for that State;

(j) "invention" means any new and useful—

(i) art, process, method or, manner of manufacture;

(ii) machine, apparatus or other article;

(iii) substance produced by manufacture.

and includes any new and useful improvement of any of them and an alleged invention;

(k) "legal representative" means a person who in law represents the estate of a deceased person;

(l) "medicine or drug" includes—

(i) all medicines for internal or external use of human beings or animals,

(ii) all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals,

(iii) all substances intended to be used for or in the maintenance of public health, or the prevention or control of any epidemic disease among human beings or animals

(iv) insecticides, germicides, fungicides, weedicides and all other substances intended to be used for the protection or preservation of plants;

(v) all chemical substances which are ordinarily used as intermediates in the preparation or manufacture of any of the medicines or substances above referred to;

(m) "patent" means a patent granted under this Act and includes for the purposes of sections 44, 49, 50, 51, 52, 54, 55, 56, 57, 58, 63, 65, 66, 68, 69, 70, 78, 134, 140, 153, 154 and 156 and Chapters XVI, XVII and XVIII, a patent granted under the Indian Patents and Designs Act, 1911 (2 of 1911);

(n) "patent agent" means a person for the time being registered under this Act as a patent agent;

(o) "patented article" and "patented process" mean respectively an article or process in respect of which a patent is in force;

(p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;

(q) "patent of addition" means a patent granted in accordance with section 54;

(r) "patent office" means the patent office referred to in section 74;

(s) "person" includes the Government;

(t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;

(u) "prescribed" means, in relation to proceedings before a High Court, prescribed by rules made by the High Court, and in other cases, prescribed by rules made under this Act;

(v) "prescribed manner" includes the payment of the prescribed fee;

(w) "priority date" has the meaning assigned to it by section 11;

(x) "register" means the register of patents referred to in section 67;

(y) "true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.

(2) In this Act, unless the context otherwise requires, any reference—

(a) to the Controller shall be construed as including a reference to any officer discharging the functions

of the Controller in pursuance of section 73;

(b) to the patent office shall be construed as including a reference to any branch office of the patent office.

## CHAPTER II

### INVENTIONS NOT PATENTABLE

3. *What are not inventions.*—The following are not inventions within the meaning of this Act,—

(a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;

(b) an invention the primary or intended use of which would be contrary to law or morality or injurious to public health;

(c) the mere discovery of a scientific principle or the formulation of an abstract theory;

(d) the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;

(e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

(f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;

(g) a method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient or for the improvement or restoration of the existing machine, apparatus or other equipment or for the improvement or control of manufacture;

(h) a method of agriculture or horticulture;

(i) any process for the medicinal, surgical curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products.

4. *Inventions relating to atomic energy not patentable.*—No patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962).

5. *Inventions where only methods or processes of manufacture patentable.*—In the case of inventions—

(a) claiming substances intended for use, or capable of being used, as food or as medicine or drug, or

(b) relating to substances prepared or produced by chemical processes (including alloys, optical glass, semi-conductors and inter-metallic compounds),

no patent shall be granted in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable.

## CHAPTER III

### APPLICATIONS FOR PATENTS

6. *Persons entitled to apply for patents.*—(1) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,—

(a) by any person claiming to be the true and first inventor of the invention;

(b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;

(c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

(2) An application under sub-section (1) may be made by any of the persons referred to therein either alone or jointly with any other person.

7. *Form of application.*—(1) Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.

(2) Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application, or within such period as may be prescribed after the filing of the application, proof of the right to make the application.

(3) Every application under this section shall state that the applicant is in possession of the invention and shall name the owner claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the applications shall contain a declaration that the applicant believes the person so named to be the true and first inventor.

(4) Every such application (not being a convention application) shall be accompanied by a provisional or a complete specification.

8. *Information and undertaking regarding foreign applications.*—(1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application—

(a) a statement setting out the name of the country where the application is being prosecuted, the serial number and date of filing of the application and such other particulars as may be prescribed; and

(b) an undertaking that, up to the date of the acceptance of his complete specification in India, he would keep the Controller informed in writing, from time to time, of details of the nature referred to in clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the statement referred to in the aforesaid clause, within the prescribed time.

(2) The Controller may also require the applicant to furnish, as far as may be available to the applicant, details relating to the objections, if any, taken to any such application as is referred to in sub-section (1) on the ground that the invention is lacking in novelty or patentability, the amendments effected in the specifications, the claims allowed in respect thereof and such other particulars as he may require.

9. *Provisional and complete specifications.*—(1) Where an application for a patent (not being a convention application) is accompanied by a provisional specification a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed the application shall be deemed to be abandoned:

Provided that the complete specification may be filed at any time after twelve months but within fifteen months from the date aforesaid, if a request to that effect is made to the Controller and the prescribed fee is paid on or before the date on which the complete specification is filed.

(2) Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another and the Controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications.

(3) Where an application or a patent (not being a convention application) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time before the acceptance of the specification, direct that such specification shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

(4) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under sub-section (3) as a provisional specification, the Controller may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of filing of the complete specification.

10. *Contents of specifications.*—(1) Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs, be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) If, in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

(4) Every complete specification shall—

(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;

(b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and

(c) end with a claim or claims defining the scope of the invention for which protection is claimed.

(5) The claim or claims of a complete specification shall relate to a single invention, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification and shall, in the case of an invention such as is referred to in section 5, relate to a single method or process of manufacture.

(6) A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.

(7) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in

the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

**11. Priority dates of claims of a complete specification.**—(1) There shall be a priority date for each claim of a complete specification.

(2) Where a complete specification is filed in pursuance of a single application accompanied by—

- (a) a provisional specification; or
- (b) a specification which is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification,

and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2) and the claim is fairly based on the matter disclosed—

- (a) in one of those specifications, the priority date of that claim shall be the date of the filing of the application accompanied by that specification;
- (b) partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.

(4) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (1) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the matter was first disclosed.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of this sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which sub-sections (2), (3), (4) and (5) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.

(7) The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.

(8) A claim in a complete specification of a patent shall not be invalid by reason only of—

- (a) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim; or
- (b) the grant of another patent which claims the invention, so far as claimed in the first mentioned claim, in a claim of the same or a later priority date.

## CHAPTER IV

### EXAMINATION OF APPLICATIONS

**12. Examination of application.**—(1) When the complete specification has been filed in respect of an application for a patent, the application and the specification relating thereto shall be referred by the Controller

to an examiner for making a report to him in respect of the following matters, namely:—

- (a) whether the application and the specification relating thereto are in accordance with the requirements of this Act and of any rules made thereunder;
- (b) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application;
- (c) the result of investigations made under section 13; and
- (d) any other matter which may be prescribed.

(2) The examiner to whom the application and the specification relating thereto are referred under sub-section (1) shall ordinarily make the report to the Controller within a period of eighteen months from the date of such reference.

**13. Search for anticipation by previous publication and by prior claim.**—(1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification—

- (a) has been anticipated by publication before the date of filing of the applicant's complete specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;
- (b) is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.

(2) The examiner shall, in addition, make such investigation as the Controller may direct for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.

(3) Where a complete specification is amended under the provisions of this Act before it has been accepted, the amended specification shall be examined and investigated in like manner as the original specification.

(4) The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

**14. Consideration of report of examiner by Controller.**—Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application or of the specification to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed time, give him an opportunity of being heard.

**15. Power of Controller to refuse or require amended applications in certain cases.**—(1) Where the Controller is satisfied that the application or any

specification filed in pursuance thereof does not comply with the requirements of this Act or of any rules made there under, the Controller may either—

- (a) refuse to proceed with the application; or
- (b) require the application, specification or drawings to be amended to his satisfaction before he proceeds with the application.

(2) If it appears to the Controller that the invention claimed in the specification is not an invention within the meaning of, or is not patentable under, this Act, he shall refuse the application.

(3) If it appears to the Controller that any invention, in respect of which an application for a patent is made, might be used in any manner contrary to law, he may refuse the application, unless the specification is amended by the insertion of such disclaimer in respect of that use of the invention, or such other reference to the illegality thereof, as the Controller thinks fit.

**16. Power of Controller to make orders respecting division of application.**—(1) A person who has made an application for a patent under this Act may, at any time before the acceptance of the complete specification, if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(2) The further application under sub-section (1) shall be accompanied by a complete specification, but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

**Explanation.** For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the complete specification in pursuance of the first mentioned application had been filed, and the further application shall, subject to the determination of the priority date under sub-section (4) of section 11, be proceeded with as a substantive application.

**17. Power of Controller to make orders respecting date of application.** (1) Subject to the provisions of section 9, at any time after the filing of an application and before acceptance of the complete specification under this Act, the Controller may, at the request of the applicant made in the prescribed manner, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly.

Provided that no application shall be post-dated under this sub-section to a date later than six months from the date on which it was actually made or would, but for the provisions of this sub-section, be deemed to have been made.

(2) Where an application or specification (including drawings) is required to be amended under clause (b) of sub-section (1) of section 15, the application or specification shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification is returned to the applicant, on the date on which it is re-filed after complying with the requirement.

**18. Powers of Controller in cases of anticipation.**—(1) Where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated in the manner referred to in clause (a) of sub-section (1) or sub-section (2) of section 13, he may refuse to accept the complete specification unless the applicant—

- (a) shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or
- (b) amends his complete specification to the satisfaction of the Controller.

(2) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 13, he may, subject to the provisions hereinafter contained, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed,—

- (a) the applicant shows to the satisfaction of the Controller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or
- (b) the complete specification is amended to the satisfaction of the Controller.

(3) If it appears to the Controller, as a result of an investigation under section 13 or otherwise,—

- (a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 13; and
- (b) that such other complete specification was published on or after the priority date of the applicant's claim, then, unless it is shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (2) shall apply thereto in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.

(4) Any order of the Controller under sub-section (2) or sub-section (3) directing the insertion of a reference to another complete specification shall be of no effect unless and until the other patent is granted.

**19. Powers of Controller in case of potential infringement.**—(1) If, in consequence of the investigations required by the foregoing provisions of this Act or of proceedings under section 25, it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public, unless within such time as may be prescribed

- (a) the applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or
- (b) the complete specification is amended to the satisfaction of the Controller.

(2) Where, after a reference to another patent has been inserted in a complete specification in pursuance of a direction under sub-section (1)—

- (a) that other patent is revoked or otherwise ceases to be in force; or
- (b) the specification of that other patent is amended by the deletion of the relevant claim; or

- (c) it is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention.

the Controller may, on the application of the applicant, delete the reference to that other patent.

**20. Powers of Controller to make orders regarding substitution of applicants, etc.**—(1) If the Controller is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for the patent or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the patent or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless—

(a) the invention is identified therein by reference to the number of the application for the patent; or

(b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(c) the rights of the claimant in respect of the invention have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4) Where one of two or more joint applicants for a patent dies at any time before the patent has been granted, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

**21. Time for putting application in order for acceptance.**—(1) An application for a patent shall be deemed to have been abandoned unless within fifteen months from the date on which the first statement of objections to the application or complete specification is forwarded by the Controller to the applicant or within such longer period as may be allowed under the following provisions of this section the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application.

**Explanation.**—Where the application or any specification or, in the case of convention application, any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has replied it.

(2) The period of fifteen months specified in sub-section (1) shall, on request made by the applicant in the prescribed manner and before the expiration of the period so specified, be extended for a further period so requested (here in after in this section referred to as the extended period), so, however, that the total period for complying with the requirements of the Controller does not exceed eighteen months from the date on which the objections referred to in sub-section (1) are forwarded to the applicant.

(3) If at the expiration of the period of fifteen months specified in sub-section (1) or the extended period—

(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention, or

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention.

the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the said period of fifteen months or the extended period, as the case may be, be extended until such date as the High Court may determine.

(4) If the time within which the appeal mentioned in sub-section (3) may be instituted has not expired, the Controller may extend the period of fifteen months, or as the case may be, the extended period, until the expiration of such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then, the requirements may be complied with within the time granted by the Court.

**22. Acceptance of complete specification.**—Subject to the provisions of section 21, the complete specification filed in pursuance of an application for a patent may be accepted by the Controller at any time after the applicant has complied with the requirements mentioned in sub-section (1) of that section, and, if not so accepted within the period allowed under that section for compliance with those requirements, shall be accepted as soon as may be thereafter:

Provided that the applicant may make an application to the Controller in the prescribed manner requesting him to postpone acceptance until such date (not being later than eighteen months from the date on which the objections referred to in sub-section (1) of section 21 are forwarded to the applicant) as may be specified in the application, and, if such application is made, the Controller may postpone acceptance accordingly.

**23. Advertisement of acceptance of complete specification.**—On the acceptance of a complete specification, the Controller shall give notice thereof to the applicant and shall advertise in the Official Gazette the fact that the specification has been accepted, and thereupon the application and the specification with the drawings (if any) filed in pursuance thereof shall be open to public inspection.



**24. Effect of acceptance of complete specification.**—On and from the date of advertisement of the acceptance of a complete specification and until the date of sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of advertisement of acceptance of the complete specification:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.

## CHAPTER V

### OPPOSITION TO GRANT OF PATENT

**25. Opposition to grant of patent.**—(1) At any time within four months from the date of advertisement of the acceptance of a complete specification under this Act (or within such further period not exceeding one month in the aggregate as the Controller may allow on application made to him in the prescribed manner before the expiry of the four months aforesaid) any person interested may give notice to the Controller of opposition to the grant of the patent on any of the following grounds, namely:—

- (a) that the applicant for the patent or the person under or through whom the claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
- (b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—
  - (i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or
  - (ii) in India or elsewhere, in any other document;

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

- (c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;
- (d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

**Explanation.**—For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

- (e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;

- (f) that the subject of any claim of the complete

specification is not an invention within the meaning of this Act, or is not patentable under this Act;

- (g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
- (h) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;
- (i) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in convention country by the applicant or a person from whom he derives title,

but on no other ground.

(2) Where any such notice of opposition is duly given, the Controller shall notify the applicant and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

(3) The grant of a patent shall not be refused on the ground stated in clause (c) of sub-section (1) if no patent has been granted in pursuance of the application mentioned in that clause; and for the purpose of any inquiry under clause (d) or clause (e) of that sub-section, no account shall be taken of any secret use.

**26. In cases of "obtaining" Controller may treat application as application of opponent.**—(a) Where in opposition proceeding under this Act—

- (a) the Controller finds that the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of sub-section (1) of section 25 and refuses the application on that ground, he may, on request by such opponent made in the prescribed manner, direct that the application shall proceed in the name of the opponent as if the application and the specification had been filed by the opponent on the date, on which they were actually filed;

- (b) the Controller finds that a part of an invention described in the complete specification was so obtained from the opponent and passes an order requiring that the specification be amended by the exclusions of that part of the invention, the opponent may, subject to the provisions of sub-section (2), file an application in accordance with the provisions of this Act accompanied by a complete specification for the grant of a patent for the invention so excluded from the applicant's specification, and the Controller may treat such application and specification as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the earlier applicant, but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.

- (2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which includes the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained

from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the earlier applicant, but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.

**27. Refusal of patent without opposition.**—If at any time after the acceptance of the complete specification filed in pursuance of an application for a patent and before the grant of a patent thereon it comes to the notice of the Controller otherwise than in consequence of proceedings in opposition to the grant under section 25, that the invention, so far as claimed in any claim of the complete specification, has been published before the priority date of the claim—

- (a) in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;
- (b) in any other document in India or elsewhere, the Controller may refuse to grant the patent unless, within such time as may be prescribed, the complete specification is amended to his satisfaction:

Provided that the Controller shall not refuse to grant the patent on the ground specified in clause (b) if such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29.

**28. Mention of inventor as such in patent.**—(1) If the Controller is satisfied, upon request or claim made in accordance with the provisions of this section,—

- (a) that the person in respect of or by whom the request or claim is made is the inventor of an invention in respect of which application for a patent has been made, or of a substantial part of that invention; and
- (b) that the application for the patent is a direct consequence of his being the inventor, the Controller shall, subject to the provisions of this section, cause him to be mentioned as inventor in any patent granted in pursuance of the application in the complete specification and in the register of patents:

Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent:

(2) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.

(3) If any person [other than a person in respect of whom a request in relation to the application in question has been made under sub-section (2)], desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

(4) A request or claim under the foregoing provisions of this section shall be made not later than two months after the date of advertisement of acceptance of the complete specification or within such further period (not exceeding one month) as the Controller may, on an application made to him in that behalf before the expiration of the said period of two months and subject to the payment of the prescribed fee, allow.

(5) No request or claim under the foregoing provisions of this section shall be entertained if it appears to the Controller that the request or claim is based upon facts which, if proved in the case of an opposition under the provisions of clause (a) of sub-section (1) of section 25 by the person in respect of or by whom the request or

claim is made, would have entitled him to relief under that section.

(6) Subject to the provisions of sub-section (5), where a claim is made under sub-section (3), the Controller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested; and before deciding upon any request or claim made under sub-section (2) or sub-section (3), the Controller shall, if required, hear the person in respect of or by whom the request or claim is made, and, in the case of a claim under sub-section (3), any person to whom notice of the claim has been given as aforesaid.

(7) Where any person has been mentioned as inventor in pursuance of this section, any other person who alleges that he ought not to have been so mentioned may at any time apply to the Controller for a certificate to that effect, and the Controller may, after hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

## CHAPTER VI ANTICIPATION

**29. Anticipation by previous publication.**—(1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in a specification filed in pursuance of an application for a patent made in India and dated before the 1st day of January, 1912.

(2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority date of the relevant claim of the specification, if the patentee or the applicant for the patent proves—

- (a) that the matter published was obtained from him, or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and
- (b) where the patentee or the applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent, or, in the case of a convention application, before the date of the application for protection in convention country, that the application or the application in the convention country, as the case may be, was made as soon as reasonably practicable thereafter:

Provided that this sub-section shall not apply if the invention was before the priority date of the claim commercially worked in India, otherwise than for the purpose of reasonable trial, either by the patentee or the applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or the applicant for the patent or any person from whom he derives title.

(3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other application for a patent in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or by any

other person in consequence of any disclosure of any invention by that applicant.

**30. Anticipation by previous communication to Government.**—An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to the Government or to any person authorised by the Government to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.

**31. Anticipation by public display, etc.**—An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of—

- (a) the display of the invention with the consent of the true and first inventor or a person deriving title from him at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the use thereof with his consent for the purpose of such an exhibition in the place where it is held; or
- (b) the publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid; or
- (c) the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor or a person deriving title from him; or
- (d) the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society,

if the application for the patent is made by the true and first inventor or a person deriving title from him not later than six months after the opening of the exhibition or the reading or publication of the paper, as the case may be.

**32. Anticipation by public working.**—An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in India—

- (a) by the patentee or applicant for the patent or any person from whom he derives title; or
- (b) by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title,

if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

**33. Anticipation by use and publication after provisional specification.** (1) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or where a complete specification filed along with an application is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used in India or published in India or elsewhere at any time after the date of the filing of that specification.

(2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything contained in this Act, the Controller shall not

refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is founded was used in India or published in India or elsewhere at any time after the date of that application for protection.

**34. No anticipation if circumstances are only as described in section 29, 30, 31 and 32.**—Notwithstanding anything contained in this Act, the Controller shall not refuse to accept a complete specification for a patent or to grant a patent, and a patent shall not be revoked or invalidated by reason only of any circumstances which, by virtue of section 29 or section 30 or section 31 or section 32, do not constitute an anticipation of the invention claimed in the specification.

## CHAPTER VII

### PROVISIONS FOR SECRECY OF CERTAIN INVENTIONS

**35. Secrecy directions relating to inventions relevant for defence purposes.**—(1) Where, in respect of an application made before or after the commencement of this Act for a patent, it appears to the Controller that the invention is one of a class notified to him by the Central Government as relevant for defence purposes, or, where otherwise the invention appears to him to be so relevant, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information to any person or class of persons specified in the directions.

(2) Where the Controller gives any such directions as are referred to in sub-section (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) Without prejudice to the provisions contained in sub-section (1), where the Central Government is of opinion that an invention in respect of which the Controller has not given any directions under sub-section (1), is relevant for defence purposes, it may at any time before acceptance of the complete specification notify the Controller to that effect, and thereupon the provisions of that sub-section shall apply as if the invention were one of the class notified by the Central Government, and accordingly the Controller shall give notice to the Central Government of the directions issued by him.

**36. Secrecy directions to be periodically reviewed.**—

(1) The question whether an invention in respect of which directions have been given under section 35 continues to be relevant for defence purposes shall be reconsidered by the Central Government within nine months from the date of issue of such directions and thereafter at intervals not exceeding twelve months, and if, on such re-consideration it appears to the Central Government that the publication of the invention would not longer be prejudicial to the defence of India it shall forthwith give notice to the Controller accordingly and the Controller shall thereupon revoke the directions previously given by him.

(2) The result of every re-consideration under sub-section (1), shall be communicated to the applicant within such time and in such manner as may be prescribed.

**37. Consequences of secrecy directions.**—(1) So long as any directions under section 35 are in force in respect of an application—

- (a) the Controller shall not pass an order refusing to accept the same; and
- (b) notwithstanding anything contained in this Act, no appeal shall lie from any order of the Controller passed in respect thereof:

Provided that the application may, subject to the directions, proceed up to the stage of the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(2) Where a complete specification filed in pursuance of an application for a patent for an invention in respect of which directions have been given under section 35 is accepted during the continuance in force of the directions, then—

- (a) if, during the continuance in force of the directions, any use of the invention is made by or on behalf of, or to the order of the Government, the provisions of sections 100, 101 and 103 shall apply in relation to that use as if the patent had been granted for the invention; and
- (b) if it appears to the Central Government that the applicant for the patent has suffered hardship by reason of the continuance in force of the directions, the Central Government may make to him such payment (if any) by way of solatium as appears to the Central Government to be reasonable having regard to the novelty and utility of the invention and the purpose for which it is designed, and to any other relevant circumstances.

(3) Where a patent is granted in pursuance of an application in respect of which directions have been given under section 35, no renewal fee shall be payable in respect of any period during which those directions were in force.

**38. Revocation of secrecy directions and extension of time.**—When any direction given under section 35 is revoked by the Controller, then, notwithstanding any provision of this Act specifying the time within which any step should be taken or any act done in connection with an application for the patent, the Controller may, subject to such conditions, if any, as he thinks fit to impose, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time has previously expired.

**39. Residents not to apply for patents outside India without prior permission.**—(1) No person resident in India shall, except under the authority of a written permit granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless—

- (a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and
- (b) either no directions have been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked

(2) The Controller shall not grant written permission to any person to make any application outside India without the prior consent of the Central Government.

(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident

outside India.

**40. Liability for contravention of section 35 or section 39.**—Without prejudice to the provisions contained in Chapter XX, if in respect of an application for a patent any person contravenes any direction as to secrecy given by the Controller under section 35 or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39, the application for patent under this Act shall be deemed to have been abandoned and the patent granted, if any, shall be liable to be revoked under section 64.

**41. Finality of orders of Controller and Central Government.**—All orders of the Controller giving directions as to secrecy as well as all orders of the Central Government under this Chapter shall be final and shall not be called in question in any court on any ground whatsoever.

**42. Savings respecting disclosure to Government.**—Nothing in this Act shall be held to prevent the disclosure by the Controller of information concerning an application for a patent or a specification filed in pursuance thereof to the Central Government for the purpose of the application or specification being examined for considering whether an order under this Chapter should be made or whether an order so made should be revoked.

## CHAPTER VIII

### GRANT AND SEALING OF PATENTS AND RIGHTS CONFERRED THEREBY

**43. Grant and sealing of patent.**—(1) Where a complete specification in pursuance of an application for a patent has been accepted and either—

- (a) the application has not been opposed under section 25 and the time for the filing of the opposition has expired; or
- (b) the application has been opposed and the opposition has been finally decided in favour of the applicant; or
- (c) the application has not been refused by the Controller by virtue of any power vested in him by this Act,

the patent shall, on request made by the applicant in the prescribed form, be granted to the applicant or, in the case of a joint application, to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the patent office and the date on which the patent is sealed shall be entered in the register.

(2) Subject to the provisions of sub-section (1) and of the provisions of this Act with respect to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of a period of six months from the date of advertisement of the acceptance of the complete specification:

Provided that—

- (a) where at the expiration of the said six months any proceeding in relation to the application for the patent is pending before the Controller or the High Court, the request may be made within the prescribed period after the final determination of that proceeding;
- (b) where the applicant or one of the applicants has died before the expiration of the time within which under the provisions of this sub-section the request could otherwise be made, the said request may be made at any time within twelve months after the date of the death or at such later time as the Controller may allow.

(3) The period within which under sub-section (2) a request for the sealing of a patent may be made, may

from time to time, be extended by the Controller to such longer period as may be specified in an application made to him in that behalf, if the application is made and the prescribed fee paid within that longer period:

Provided that the first mentioned period shall not be extended under this sub-section by more than three months in the aggregate.

*Explanation.* For the purposes of this section a proceeding shall be deemed to be pending so long as the time for any appeal therein (apart from any future extension of that time) has not expired and a proceeding shall be deemed to be finally determined when the time for any appeal therein (apart from any such extension) has expired without the appeal being brought.

**44. Amendment of patent granted to deceased applicant.** Where, at any time after a patent has been sealed in pursuance of an application under this Act, the Controller is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was sealed, the Controller may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

**45. Date of patent.**—(1) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the complete specification was filed:

Provided that a patent which is granted in pursuance of an application to which any directions issued under section 78C of the Indian Patents and Designs Act, 1911 (2 of 1911) applied immediately before the commencement of this Act, shall be dated as of the date of the filing of the complete specification or the date of such commencement whichever is later.

(2) The date of every patent shall be entered in the register.

(3) Notwithstanding anything contained in this section, no suit or other proceeding shall be commenced or prosecuted in respect of an infringement committed before the date of advertisement of the acceptance of the complete specification.

**46. Form, extent and effect of patent.**—(1) Every patent shall be in the prescribed form and shall have effect throughout India.

(2) A patent shall be granted for one invention only:

Provided that it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

**47. Grant of patents to be subject to certain conditions.**—The grant of a patent under this Act shall be subject to the condition that—

(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;

(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;

(3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which

the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and

(4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

**48. Rights of patentees.**—(1) Subject to the other provisions contained in this Act, a patent granted before the commencement of this Act, shall confer on the patentee the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute the invention in India.

(2) Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted after the commencement of this Act shall confer upon the patentee—

(a) where the patent is for an article or substance, the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute such article or substance in India;

(b) where a patent is for a method or process of manufacturing an article or substance, the exclusive right by himself, his agents or licensees to use or exercise the method or process in India.

**49. Patent rights not infringed when used on foreign vessels, etc., temporarily or accidentally in India.**—(1) Where a vessel or aircraft registered in a foreign country or a land vehicle owned by a person ordinarily resident in such country comes into India (including the territorial waters thereof) temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention—

(a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or

(b) in the construction or working of the aircraft or land vehicle or of the accessories thereof, as the case may be.

(2) This section shall not extend to vessels, aircraft or land vehicles owned by persons ordinarily resident in a foreign country the laws of which do not confer corresponding rights with respect to the use of inventions in vessels, aircraft or land vehicles owned by persons ordinarily resident in India while in the ports or within the territorial waters of that foreign country or otherwise within the jurisdiction of its courts.

**50. Rights of co-owners of patents.**—(1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to the provisions contained in this section and in section 51, where two or more persons are registered as grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to make, use, exercise and sell the patented invention for his own benefit without accounting to the other person or persons.

(3) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons registered as grantee



or proprietor of a patent, then; a licence under the patent shall not be granted and a share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons.

(4) Where a patented article is sold by one of two or more persons registered as grantee or proprietor of a patent the purchaser and any person claiming through him shall be entitled to deal with the article in the same manner as if the article had been sold by a sole patentee.

(5) Subject to the provisions contained in this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents; and nothing contained in sub-section (1) or sub-section (2) shall affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.

(6) Nothing in this section shall affect the rights of the assignees of a partial interest in a patent created before the commencement of this Act.

**51. Power of Controller to give directions to co-owners.**—(1) Where two or more persons are registered as grantee or proprietor of a patent, the Controller may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent, or the exercise of any right under section 50 in relation thereto, as he thinks fit.

(2) If any person registered as grantee or proprietor of a patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Controller may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(3) Before giving any directions in pursuance of an application under this section, the Controller shall give an opportunity to be heard—

(a) in the case of an application under sub-section (1), to the other person or persons registered as grantee or proprietor of the patent;

(b) in the case of an application under sub-section (2), to the person in default.

(4) No direction shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or of their rights or obligations as such, or which is inconsistent with the terms of any agreement between persons registered as grantee or proprietor of the patent.

**52. Grant of patent to true and first inventor where it has been obtained by another in fraud of him.**—(1) Where a patent has been revoked on the ground that the patent was obtained wrongfully and in contravention of the rights of the petitioner or any person under or through whom he claims, or, where in a petition for revocation, the court, instead of revoking the patent, directs the complete specification to be amended by the exclusion of a claim or claims in consequence of a finding that the invention covered by such claim or claims had been obtained from the petitioner, the court may, by order passed in the same proceeding, permit the grant to the petitioner of the whole or such part of the invention which the court finds has been wrongfully obtained by the patentee, in lieu of the patent so revoked or is excluded by amendment.

(2) Where any such order is passed, the Controller shall, on request by the petitioner made in the prescribed manner grant to him—

(i) in cases where the court permits the whole of the patent to be granted, a new patent bearing the same date and number as the patent revoked;

(ii) in cases where the court permits a part only of the patent to be granted, a new patent for such part bearing the same date as the patent revoked and numbered in such manner as may be prescribed;

Provided that the Controller may, as a condition of such grant, require the petitioner to file a new and complete specification to the satisfaction of the Controller describing and claiming that part of the invention for which the patent is to be granted.

(3) No suit shall be brought for any infringement of a patent granted under this section committed before the actual date on which such patent was granted.

**53. Term of patent.**—(1) Subject to the provisions of this Act, the term of every patent granted under this Act shall—

(a) in respect of an invention claiming the method or process of manufacture of a substance, where the substance is intended for use, or is capable of being used, as food or as a medicine or drug, be five years from the date of sealing of the patent, or seven years from the date of the patent whichever period is shorter; and

(b) in respect of any other invention, be fourteen years from the date of the patent.

(2) A patent shall cease to have effect notwithstanding anything therein or in this Act on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period or within that period as extended under this section.

(3) The period prescribed for the payment of any renewal fee shall be extended to such period, not being more than six months longer than the prescribed period, as may be specified in a request made to the Controller if the request is made and the renewal fee and the prescribed additional fee paid before the expiration of the period so specified.

## CHAPTER IX

### PATENTS OF ADDITION

**54. Patents of addition.**—(1) Subject to the provisions contained in this section, where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed therefor (in this Act referred to as the "main invention") and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

(2) Subject to the provisions contained in the section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, by order, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of filing of the complete specifica-

tion was the same as or later than the date of filing of the complete specification in respect of the main invention.

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention; and if the period within which, but for the provisions of this sub-section, a request for the sealing of a patent of addition could be made under section 43 expires before the period within which a request for the sealing of the patent for the main invention may be so made, the request for the sealing of the patent of addition may be made at any time within the last mentioned period.

**55. Term of patents of addition.**—(1) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as has not expired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provide that if the patent for the main invention is revoked under this Act, the court, or, as the case may be, the Controller, on request made to him by the patentee in the prescribed manner, may order that the patent of addition shall become an independent patent for the remainder of the term for the patent for the main invention and thereupon the patent shall continue in force as an independent patent accordingly.

(2) No renewal fees shall be payable in respect of a patent of addition, but, if any such patent becomes an independent patent under sub-section (1), the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.

**56. Validity of patents of addition.**—(1) The grant of a patent of addition shall not be refused, and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of

(a) the main invention described in the complete specification relating thereto; or

(b) any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition,

and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

(2) For the removal of doubts it is hereby declared that in determining the novelty of the invention claimed in the complete specification filed in pursuance of an application for a patent of addition regard shall be had also to the complete specification in which the main invention is described.

## CHAPTER X

### AMENDMENT OF APPLICATIONS AND SPECIFICATIONS

**57. Amendment of application and specification before Controller.**—(1) Subject to the provisions of section 59, the Controller may, upon application made under this section in the prescribed manner by an applicant for a patent or by a patentee, allow the application for the patent or the complete specification to be amended subject to such conditions, if any, as the Controller thinks fit:

Provided that the Controller shall not pass any order allowing or refusing an application to amend an application for a patent or a specification under this section

while any suit before a court for the infringement of the patent or any proceeding before the High Court for the revocation of the patent is pending, whether the suit or proceeding commenced before or after the filing of the application to amend.

(2) Every application for leave to amend an application for a patent or a specification under this section shall state the nature of the proposed amendment, and shall give full particulars of the reasons for which the application is made.

(3) Every application for leave to amend an application for a patent or a specification under this section made after the acceptance of the complete specification and the nature of the proposed amendment shall be advertised in the prescribed manner.

(4) Where an application is advertised under sub-section (3), any person interested may, within the prescribed period after the advertisement thereof, give notice to the Controller of opposition thereto; and where such a notice is given within the period aforesaid, the Controller shall notify the person by whom the application under this section is made and shall give to that person and to the opponent an opportunity to be heard before he decides the case.

(5) An amendment under this section of a complete specification may be, or include, an amendment of the priority date of a claim.

(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification to comply with the directions of the Controller issued before the acceptance of the complete specification or in the course of proceedings in opposition to the grant of a patent.

**58. Amendment of specification before High Court.**—

(1) In any proceeding before the High Court for the revocation of a patent, the High Court may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the High Court may think fit, and if in any proceedings for revocation the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the High Court.

(3) Copies of all orders of the High Court allowing the patentee to amend the specification shall be transmitted by the High Court to the Controller who shall on receipt thereof cause an entry thereof and reference thereto to be made in the register.

**59. Supplementary provisions as to amendment of application or specification.**—(1) No amendment of an application for a patent or a complete specification shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of correcting an obvious mistake, and no amendment of a complete specification shall be allowed the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(2) Where after the date of advertisement of acceptance

of a complete specification, any amendment of the specification is allowed by the Controller or by the High Court,—

- (a) the amendment shall for all purposes be deemed to form part of the specification;
  - (b) the fact that the specification has been amended shall be advertised in the Official Gazette; and
  - (c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.
- (3) In construing the specification as amended, reference may be made to the specification as originally accepted.

## CHAPTER XI

### RESTORATION OF LAPSED PATENTS

#### 60. Applications for restoration of lapsed patents.—

(1) Where a patent has ceased to have effect by reason of failure to pay and renewal fee within the prescribed period or within that period as extended under sub-section (3) of section 53, the patentee or his legal representative, and where the patent was held by two or more persons jointly, them, with the leave of the Controller, one or more of them without joining the others, may, within one year from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

(2) The provisions of sub-section (1) shall also apply to patents granted before the commencement of this Act, subject to the modification that for the reference to the prescribed period or to sub-section (3) of section 53, there shall be substituted a reference to the period prescribed therefor under the Indian Patents and Designs Act, 1911 (2 of 1911) or to sub-section (2) of section 14 of that Act.

(3) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

61. Procedure for disposal of applications for restoration of lapsed patents.—(1) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is *prima facie* satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall advertise the application in the prescribed manner; and within the prescribed period any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds, that is to say,—

- (a) that the failure to pay the renewal fee was not unintentional; or
- (b) that there has been undue delay in the making of the application.

(2) If notice of opposition is given within the period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(3) If no notice of opposition is given within the period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.

(4) The Controller may, if he thinks fit as a condition of restoring the patent, require that an entry shall be

made in the register of any document or matter which, under the provisions of this Act, has to be entered in the register but which has not been so entered.

62. Rights of patentees of lapsed patents which have been restored.—(1) Where a patent is restored, the rights of the patentee shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the patented invention between the date when the patent ceased to have effect and the date of the advertisement of the application for restoration of the patent under this Chapter.

(2) No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the date of the advertisement of the application for restoration of the patent.

## CHAPTER XII

### SURRENDER AND REVOCATION OF PATENTS

63. Surrender of patents.—(1) A patentee may, at any time by giving notice in the prescribed manner to Controller, offer to surrender his patent.

(2) Where such an offer is made, the Controller shall advertise the offer in the prescribed manner, and also notify every person other than the patentee whose name appears in the register as having an interest in the patent.

(3) Any person interested may, within the prescribed period after such advertisement, give notice to the Controller of opposition to the surrender, and where any such notice is given the Controller shall notify the patentee.

(4) If the Controller is satisfied after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and, by order, revoke the patent.

64. Revocation of patents.—(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, on the petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent, be revoked by the High Court on any of the following grounds, that is to say—

- (a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;
- (b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor;

Provided that a patent granted under the Indian Patents and Designs Act, 1911 (2 of 1911), shall not be revoked on the ground that the applicant was the communicatee or the importer of the invention in India and therefore not entitled to make an application for the grant of a patent under this Act;

- (c) that the patent was obtained wrongfully in contravention of the rights of the petitioner or any person under or through whom he claims;
- (d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

- (e) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in section 13;

Provided that in relation to patents granted under the Indian Patents and Designs Act, 1911 (2 of 1911), this clause shall have effect as if the words "or elsewhere" had been omitted;

- (f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim;

Provided that in relation to patents granted under the Indian Patents and Designs Act, 1911 (2 of 1911), this clause shall have effect as if the words "or elsewhere" had been omitted;

- (g) that the invention, so far as claimed in any claim of the complete specification, is not useful;
- (h) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention, or that it does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;
- (i) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;
- (j) that the patent was obtained on a false suggestion or representation;
- (k) that the subject of any claim of the complete specification is not patentable under this Act;
- (l) that the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in sub-section (3), before the priority date of the claim;
- (m) that the applicant for the patent has failed to disclose to the Controller the information required by section 8 or has furnished information which in any material particular was false to his knowledge;
- (n) that the applicant contravened any direction for secrecy passed under section 35 or made or caused to be made an application for the grant of a patent outside India in contravention of section 39;
- (o) that leave to amend the complete specification under section 57 or section 58 was obtained by fraud.

(2) For the purposes of clauses (e) and (f) of sub-section (1),

- (a) no account shall be taken of secret use; and
- (b) where the patent is for a process or for a product as made by a process described or claimed, the importation into India of the product made abroad by that process shall constitute knowledge or use in India of the invention on the date of the importation, except where such importation has

been for the purpose of reasonable trial or experiment only.

- (3) For the purpose of clause (l) of sub-section (1), no account shall be taken of any use of the invention—

- (a) for the purpose of reasonable trial or experiment only; or
- (b) by the Government or by any person authorised by the Government or by a Government undertaking, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention directly or indirectly to the Government or person authorised as aforesaid or to the Government undertaking; or
- (c) by any other person, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention, and without the consent or acquiescence of the applicant or of any person from whom he derives title.

(4) Without prejudice to the provisions contained in sub-section (1), a patent may be revoked by the High Court on the petition of the Central Government, if the High Court is satisfied that the patentee has without reasonable cause failed to comply with the request of the Central Government to make, use or exercise the patented invention for the purposes of Government within the meaning of section 99 upon reasonable terms.

(5) A notice of any petition for revocation of a patent under this section shall be served on all person appearing from the register to be proprietors of that patent or to have shares or interests therein and it shall not be necessary to serve a notice on any other person.

**65. Revocation of patent or amendment of complete specification on directions from Central Government in cases relating to atomic energy.**—(1) Where at any time after acceptance of a complete specification, the Central Government is satisfied that an application for a patent or a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962), it may direct the Controller to refuse to proceed further with the application or to revoke the patent, as the case may be, and thereupon the Controller, after giving notice to the applicant or, as the case may be, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may refuse to proceed further with the application or may revoke the patent.

(2) In any proceeding under sub-section (1), the Controller may allow the applicant for the patent or the patentee to amend the complete specification in such manner as he considers necessary instead of refusing to proceed with the application or revoking the patent.

**66. Revocation of patent in public interest.**—Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

#### CHAPTER XIII REGISTER OF PATENTS

**67. Register of patents and particulars to be entered therein.**—(1) There shall be kept at the patent office a register of patents, wherein shall be entered—

- (a) the names and addresses of grantees of patents;

- (b) notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents; and
- (c) particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) No notice of any trust, whether express, implied or constructive, shall be entered in the register, and the Controller shall not be affected by any such notice.

(3) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Controller.

(4) For the removal of doubts, it is hereby declared that the register of patents existing at the commencement of this Act shall be incorporated in, and form part of, the register under this Act.

68. *Assignments, etc., not to be valid unless in writing and registered.*—An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller within six months from the commencement of this Act or the execution of the document, whichever is later or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows:

Provided that the document shall, when registered, have effect from the date of its execution.

69. *Registration of assignments, transmissions, etc.*—(1) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.

(2) Without prejudice to the provisions of sub-section (1), an application for the registration of the title of any person becoming entitled by assignment to a patent or a share in a patent or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a patent may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(3) Where an application is made under this section for the registration of the title of any person the Controller shall upon proof of title to his satisfaction,—

- (a) where that person is entitled to a patent or a share in a patent, register him in the register as proprietor or co-proprietor of the patent, and enter in the register particulars of the instrument or event by which he derives title; or
- (b) where that person is entitled to and other interest in the patent, enter in the register notice of his interest, with particulars of the instrument, if any, creating it:

Provided that if there is any dispute between the parties whether the assignment, mortgage, licence, transmission, operation of law or any other such transaction has validly vested in such person a title to the patent or any share or interest therein the Controller may refuse to take any action under clause (a) or, as the case may be, under clause (b), until the rights of the parties have been determined by a competent court.

(4) There shall be supplied to the Controller in the prescribed manner for being filed in the patent office copies of all agreements, licences and other documents affecting the title to any patent or any licence thereunder authenticated in the prescribed manner and also such other documents as may be prescribed relevant to the subject matter: •

Provided that in the case of a licence granted under a patent, the Controller shall, if so requested by the patentee or licensee, take steps for securing that the terms of the licence are not disclosed to any person except under the order of a court.

(5) Except for the purposes of an application under sub-section (1) or of an application to rectify the register a document in respect of which no entry has been made in the register under sub-section (3) shall not be admitted by the Controller or by any court as evidence of the title of any person to a patent or to a share or interest therein unless the Controller or the court, for reasons to be recorded in writing, otherwise directs.

70. *Power of registered grantee or proprietor to deal with patent.*—Subject to the provisions contained in this Act relating to co-ownership of patents and subject also to any rights vested in any other person of which notice is entered in the register, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent may be enforced in like manner as in respect of any other movable property.

71. *Rectification of register by High Court.*—(1) The High Court may, on the application of any person aggrieved—

- (a) by the absence or omission from the register of any entry; or
- (b) by any entry made in the register without sufficient cause; or
- (c) by any entry wrongly remaining on the register; or
- (d) by any error or defect in any entry in the register, make such order for the making, variation or deletion of any entry therein as it may think fit.

(2) In any proceeding under this section the High Court may decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(3) Notice of any application to the High Court under this section shall be given in the prescribed manner to the Controller who shall be entitled to appear and be heard on the application, and shall appear if so directed by the court.

(4) Any order of the High Court under this section rectifying the register shall direct that notice of the rectification shall be served upon the Controller in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

72. *Register to be open for inspection.*—(1) Subject to the provisions contained in this Act and any rules made thereunder, the register shall at all convenient times be open to inspection by the public; and certified copies sealed with the seal of the patent office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(2) The register shall be *prima facie* evidence of any matters required or authorised by or under this Act to be entered therein.



## CHAPTER XIV

## PATENT OFFICE AND ITS ESTABLISHMENT

73. *Controller and other officers.*—(1) The Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958, (43 of 1958) shall be the Controller of patents for the purposes of this Act.

(2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers and with such designations as it thinks fit.

(3) Subject to the provisions of this Act, the officers appointed under sub-section (2) shall discharge under the superintendence and directions of the Controller such functions of the controller under this Act as he may, from time to time by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section (3), the Controller may, by order in writing and for reasons to be recorded therein withdraw any matter pending before an officer appointed under sub-section (2) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section (2) who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

74. *Patent office and its branches.*—(1) For the purposes of this Act, there shall be an office which shall be known as the patent office.

(2) The patent office provided by the Central Government under the Indian Patents and Designs Act, 1911 (2 of 1911), shall be the patent office under this Act.

(3) The head office of the patent office shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of patents there may be established, at such other places as the Central Government may think fit, branch offices of the patent office.

(4) There shall be a seal of the patent office.

75. *Restriction on employees of patent office as to right or interest in patents.*—All officers and employees of the patent office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by that office.

76. *Officers and employees not to furnish information, etc.*—An officer or employee in the patent office shall not, except when required or authorised by this Act or under a direction in writing of the Central Government or the Controller or by order of a court,—

- (a) furnish information on a matter which is being, or has been, dealt with under this Act or under the Indian Patents and Designs Act 1911 (2 of 1911), or
- (b) prepare or assist in the preparation of a document required or permitted by or under this Act or under the Indian Patents and Designs Act 1911 (2 of 1911), to be lodged in the patent office; or
- (c) conduct a search in the records of the patent office.

## CHAPTER XV

## POWERS OF CONTROLLER GENERALLY

77. *Controller to have certain powers of a civil court.*—(1) Subject to any rules made in this behalf, the Controller in any proceedings before him under this Act shall have the powers, of a civil Court while trying a suit under

the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) awarding costs;
- (f) reviewing his own decision on application made within the prescribed time and in the prescribed manner;
- (g) setting aside an order passed *ex parte* on application made within the prescribed time and in the prescribed manner;
- (h) any other matter which may be prescribed.

(2) Any order for costs awarded by the Controller in exercise of the powers conferred upon him under sub-section (1) shall be executable as a decree of a civil court.

78. *Power of Controller to correct clerical errors, etc.*—(1) Without prejudice to the provisions contained in sections 57 and 59, as regards amendment of applications for patents or complete specifications and subject to the provisions of section 44, the Controller may, in accordance with the provisions of this section, correct any clerical error in any patent or in any specification or other document filed in pursuance of such application or in any application for a patent or any clerical error in any matter which is entered in the register.

(2) A correction may be made in pursuance of this section either upon a request writing made by any person interested and accompanied by the prescribed fee, or without such a request.

(3) Where the Controller proposes to make any such correction as aforesaid otherwise than in pursuance of a request made under this section, he shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.

(4) Where a request is made under this section for the correction of any error in a patent or application for a patent or any document filed in pursuance of such an application, and it appears to the Controller that the correction would materially alter the meaning or scope of the document to which the request relates and ought not to be made without notice to persons affected thereby, he shall require notice of the nature of the proposed correction to be advertised in the prescribed manner.

(5) Within the prescribed time after any such advertisement as aforesaid any person interested may give notice to the Controller of opposition to the request, and, where such notice of opposition is given, the Controller shall give notice thereof to the person by whom the request was made, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

79. *Evidence how to be given and powers of Controller in respect thereof.*—Subject to any rules made in this behalf, in any proceeding under this Act before the Controller, evidence shall be given by affidavit in the absence of directions by the Controller to the contrary, but in any case in which the Controller thinks it right so to do, he may take oral evidence in lieu of, or in addition to, evidence by affidavit, or may allow any party to be cross-examined on the contents of his affidavit.

**80. Exercise of discretionary powers by Controller.**—Without prejudice to any provision contained in this Act requiring the Controller to hear any party to the proceedings thereunder or to give any such party an opportunity to be heard, the Controller shall give to any applicant for a patent, or for amendment of a specification (if within the prescribed time the applicant so requires) an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Controller by or under this Act.

**81. Disposal by Controller of applications for extension of time.**—Where under the provisions of this Act or the rules made thereunder the Controller may extend the time for doing any act, nothing in this Act shall be deemed to require him to give notice to or hear the party interested in opposing the extension, nor shall any appeal lie from any order of the Controller granting such extension.

## CHAPTER XVI

### WORKING OF PATENTS, COMPULSORY LICENCES OF RIGHTS AND REVOCATIONS

**82. Definitions of "patented articles and patentee."**—In this Chapter, unless the context otherwise requires,—

- (a) "patented article" includes any article made by a patented process; and
- (b) "patentee" includes an exclusive licensee.

**83. General principles applicable to working of patented inventions.**—Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely,—

- (a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay; and
- (b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.

**84. Compulsory licences.**—(1) At any time after the expiration of three years from the date of the sealing of a patent, any person interested may make an application to the Controller alleging that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price and praying for the grant of a compulsory licence to work the patented invention.

(2) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not available to the public at a reasonable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence.

(3) Every application under sub-section (1) shall contain a statement setting out the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(4) In considering the application filed under this section the Controller shall take into account the matters set out in section 85.

(5) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented

invention have not been satisfied or that the patented invention is not available to the public at a reasonable price, may order the patentee to grant a licence upon such terms as he may deem fit.

(6) Where the Controller directs the patentee to grant of licence he may as incidental thereto exercise the powers a set out in section 93.

**85. Matter to be taken into account in granting compulsory licences.**—In determining whether or not to make an order in pursuance of an application filed under section 84, the Controller shall take into account,—

- (i) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;
- (ii) the ability of the applicant to work the invention to the public advantage;
- (iii) the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted,

but shall not be required to take into account matters subsequent to the making of the application.

**86. Endorsement of patent with the words "Licences of right".**—(1) At any time after the expiration of three years from the date of the sealing of a patent, the Central Government may make an application to the Controller for an order that the patent may be endorsed with the words "Licences of right" on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price.

(2) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price, may make an order that the patent be endorsed with the words "Licences of right".

(3) Where a patent of addition is in force, any application made under this section for an endorsement either of the original patent or of the patent of addition shall be treated as an application for the endorsement of both patents, and where a patent of addition is granted in respect of a patent which is already endorsed under this section, the patent of addition shall also be endorsed.

(4) All endorsements of patents made under this section shall be entered in the register and published in the Official Gazette and in such other manner as the Controller thinks desirable for bringing the endorsement to the notice of manufacturers.

**87. Certain patents deemed to be endorsed with the words "Licences of right".**—(1) Notwithstanding anything contained in this Act,—

- (a) every patent in force at the commencement of this Act in respect of inventions relating to—
  - (i) substances used or capable of being used as food or as medicine or drug;
  - (ii) the methods or processes for the manufacture or production of any such substance as is referred to in sub-clause (i);
  - (iii) the methods or processes for the manufacture or production of chemical substances (including alloys, optical glass, semi-conductors and inter-metallic compounds).

shall be deemed to be endorsed with the words "Licences of right" from the commencement of this Act or from the expiration of three years from the date of sealing of the patent under the Indian Patents and Designs Act, 1911 (2 of 1911), whichever is later; and

(b) every patent granted after the commencement of this Act in respect of any such invention as is referred to in section 5 shall be deemed to be endorsed with the words "Licences of right" from the date of expiration of three years from the date of sealing of the patent.

(2) In respect of every patent which is deemed to be endorsed with the words "Licences of right" under this section, the provisions of section 88 shall apply.

**88. Effect on endorsement of patent with the words "Licences of right".**—(1) Where a patent has been endorsed with the words "Licences of right", any person who is interested in working the patented invention in India may require the patentee to grant him a licence for the purpose on such terms as may be mutually agreed upon, notwithstanding that he is already the holder of a licence under the patent.

(2) If the parties are unable to agree on the terms of the licence, either of them may apply in the prescribed manner to the Controller to settle the terms thereof.

(3) The Controller shall, after giving notice to the parties and hearing them and after making such enquiry as he may deem fit, decide the terms on which the licence shall be granted by the patentee.

(4) The Controller may at any time before the terms of the licence are mutually agreed upon or decided by the Controller, on application made to him in this behalf by any person who has made any such requisition as is referred to in sub-section (1), permit him to work the patented invention on such terms as the Controller may, pending agreement between the parties or decision by the Controller, think fit to impose.

(5) In the case of every patent in respect of an invention referred to in sub-clause (i), or sub-clause (ii), of clause (a) of sub-section (1) of section 87 and deemed to be endorsed with the words "Licences of right" under clause (a) or clause (b) of that sub-section, the royalty and other remuneration reserved to the patentee under a licence granted to any person after such commencement shall in no case exceed four per cent of the net ex-factory sale price in bulk of the patented article (exclusive of taxes levied under any law for the time being in force and any commissions payable) determined in such manner as may be prescribed.

(6) Save as otherwise provided in sub-section (5), the provisions of sub-sections (1), (2), (4) and (5) of section 93 (regarding the powers of the Controller) and of sections 94 and 95 shall apply to licences granted under this section as they apply to licences granted under section 84.

**89. Revocation of patents by the Controller for non-working.**—(1) Where, in respect of a patent, a compulsory licence has been granted or the endorsement "Licences of right" has been made or is deemed to have been made, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence or, as the case may be, the date of the grant of the first licence under section 88, apply to the Controller for an order revoking the patent on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed and the facts upon which the application is based, and, in the case of an application other than by the Central Government, shall also set out the nature of the applicant's interest.

(3) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price, may make an order revoking the patent.

(4) Every application under sub-section (1) shall ordinarily be decided within one year of its being presented to the Controller.

**90. When reasonable requirements of the public deemed not satisfied.**—For the purposes of sections 84, 86 and 89, the reasonable requirements of the public shall be deemed not to have been satisfied—

(a) if, by reason of the default of the patentee to manufacture in India to an adequate extent and supply on reasonable terms the patented article or a part of the patented article which is necessary for its efficient working or if, by reason of the refusal of the patentee to grant a licence or licences on reasonable terms,—

(i) an existing trade or industry or the development thereof or the establishment of any, new trade or industry in India or the trade or industry of any person or classes of persons trading or manufacturing in India is prejudiced; or

(ii) the demand for the patented article is not being met to an adequate extent or on reasonable terms from manufacture in India; or

(iii) a market for the export of the patented article manufactured in India is not being supplied or developed; or

(iv) the establishment or development of commercial activities in India is prejudiced; or

(b) if, by reason of conditions imposed by the patentee (whether before or after the commencement of this Act) upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudice; or

(c) if the patented invention is not being worked in India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonable practicable; or

(d) if the demand for the patented article in India is being met to a substantial extent by importation from abroad by—

(i) the patentee or persons claiming under him; or

(ii) persons directly or indirectly purchasing from him; or

(iii) other persons against whom the patentee is not taking or has not taken proceedings for infringement; or

(e) if the working of the patented invention in India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or the other persons referred to in the preceding clause.

**91. Power of Controller to adjourn applications for compulsory licences, etc., in certain cases.**—(1) Where an application under section 84, section 86 or section 89, as the case may be, is made on the ground mentioned in clause (c) of section 90 and the Controller is satisfied that the time which has elapsed since the sealing of the patent has for any reason been insufficient to enable the

invention to be worked on a commercial scale to an adequate extent or to enable the invention to be so worked to the fullest extent that is reasonably practicable, he may, by order, adjourn the further hearing of the application for such period not exceeding twelve months in the aggregate as appears to him to be sufficient for the invention to be so worked:

Provided that in any case where the patentee establishes that the reason why a patented invention could not be worked as aforesaid before the date of the application was due to any State or Central Act or any rule or regulation made thereunder or any order of the Government imposed otherwise than by way of a condition for the working of the invention in India or for the disposal of the patented articles or of the articles made by the process or by the use of the patented plant, machinery or apparatus, then, the period of adjournment ordered under this sub-section shall be reckoned from the date on which the period during which the working of the invention was prevented by such Act, rule or regulation or order of Government as computed from the date of the application, expires.

(2) No adjournment under sub-section (1) shall be ordered unless the Controller is satisfied that the patentee has taken with promptitude adequate or reasonable steps to start the working of the invention in India on a commercial scale and to an adequate extent.

**92. Procedure for dealing with applications under sections 84, 86 and 89.**—(1) Where the Controller is satisfied, upon consideration of an application under section 84, section 86 or section 89, that a *prima facie* case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other person appearing from the register to be interested in the patent in respect of which the application is made, and shall advertise the application in the Official Gazette.

(2) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may on application (made either before or after the expiration of the prescribed time) allow, give to the Controller notice of opposition.

(3) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(4) Where any such notice of opposition is duly given, the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

**93. Powers of Controller in granting compulsory licences.**—(1) Where the Controller is satisfied on application made under section 84 that the manufacture, use or sale of materials not protected by the patent is prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of that section, orders the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(2) Where an application under section 84 is made by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licences to be cancelled, or may, if he thinks fit, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.

(3) Where on an application made under section 84, the Controller orders the grant of a licence, he may, for reasons to be recorded in writing, direct that the licence shall operate—

(a) to deprive the patentee of any right which he may have as patentee to make, use, exercise or vend the invention or to grant licences under the patent;

(b) to revoke all existing licences in respect of the invention.

(4) Where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect to some only of the said patents, then if the Controller is satisfied that the applicant cannot efficiently or satisfactorily work the licence granted to him under those patents without infringing the other patents held by the patentee, he may, by order, direct the grant of a licence in respect of the other patents also to enable the licence to work the patent or patents in regard to which a licence is granted under section 84.

(5) Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions settled have proved to be more onerous than originally expected and that in consequence thereon the licensee is unable to work the invention except at a loss:

Provided that no such application shall be entertained a second time.

**94. General purposes for granting compulsory licences.**—The powers of the Controller upon an application made under section 84 shall be exercised with a view to securing the following general purposes, that is to say,—

- (a) that patented inventions are worked on a commercial scale in India without undue delay and to the fullest extent that is reasonably practicable;
- (b) that the interests of any person for the time being working or developing an invention in India under the protection of a patent are not unfairly prejudiced.

**95. Terms and conditions of compulsory licences.**—(1) In settling the terms and conditions of a licence under section 84, the Controller shall endeavour to secure—

- (i) that the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;
- (ii) that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;
- (iii) that the patented articles are made available to the public at reasonable prices.

(2) No licence granted by the Controller shall authorise the licensee to import the patented article or an article or substance made by a patented process from abroad where such importation would, but for such authorisation, constitute an infringement of the rights of the patentee.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, if in its opinion it is necessary so to do in the public interest, direct the Controller at any time to authorise any licensee in respect of a patent to import the patented article or any article or substance made by a patented process from abroad (subject to such conditions as it considers necessary to impose relating among other matters to the royalty and other remuneration, if any, payable to the patentee, the quantum of import, the sale price of the imported article, and the period of importation), and thereupon the Controller shall give effect to the directions.

96. *Licensing of related patents.*—(1) Notwithstanding anything contained in the other provisions of this Chapter, at any time after the sealing of a patent, any person who has the right to work any other patented invention either as patentee or as licensee thereof, exclusive or otherwise, may apply to the Controller for the grant of licence of the first mentioned patent on the ground that he is prevented or hindered without such licence from working the other invention efficiently or to the best advantage possible.

(2) No order under sub-section (1) shall be made unless the Controller is satisfied—

- (i) that the applicant is able and willing to grant, or procure the grant to the patentee and his licensees if they so desire, of a licence in respect of the other invention on reasonable terms; and
- (ii) that the other invention has made a substantial contribution to the establishment or development of commercial or industrial activities in India.

(3) When the Controller is satisfied that the conditions mentioned in sub-section (1) have been established by the applicant, he may make an order on such terms as he thinks fit granting a licence under the first mentioned patent and a similar order under the other patent if so requested by the proprietor of the first mentioned patent or his licensee.

(4) The provisions of sections 92 and 110 shall apply to licences granted under this section as they apply to licences granted under section 84.

97. *Special provision for compulsory licences on notification by Central Government.*—(1) If the Central Government is satisfied in respect of any patent or class of patents in force that it is necessary or expedient in the public interest that compulsory licences should be granted at any time after the sealing thereof to work the invention or inventions, it may make a declaration to that effect in the Official Gazette, and thereupon the following provisions shall have effect, that is to say—

- (i) the Controller shall on application made at any time after the notification by any person interested grant to the applicant a licence under the patent on such terms as he thinks fit;
- (ii) in settling the terms of a licence granted under this section, the Controller shall endeavour to secure that the articles manufactured under the patent shall be available to the public at the lowest prices consistent with the patentees deriving reasonable advantage from their patent rights.

(3) The provisions of sections 92, 93, 94 and 95 shall apply in relation to the grant of licences under this section as they apply in relation to the grant of licences under section 84.

98. *Order for licence to operate as a deed between parties concerned.* Any order on the grant of a licence under this Chapter shall operate as if it were a deed

granting a licence executed by the patentee and all other necessary parties embodying the terms and conditions, if any, settled by the Controller.

## CHAPTER XVII

### USE OF INVENTIONS FOR PURPOSES OF GOVERNMENT AND ACQUISITION OF INVENTIONS BY CENTRAL GOVERNMENT

99. *Meaning of use of invention for purposes of Government.*—(1) For the purposes of this Chapter, an invention is said to be used for the purposes of Government if it is made, used, exercised or vended for the purposes of the Central Government, a State Government or a Government undertaking.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

- (a) the importation, by or on behalf of the Government, of any invention being a machine, apparatus or other article covered by a patent granted before the commencement of this Act, for the purpose merely of its own use; and
- (b) the importation, by or on behalf of the Government, of any invention being a medicine or drug covered by a patent granted before the commencement of this Act—

(i) for the purpose merely of its own use; or

(ii) for the purpose of distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or in any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service which such other dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette,

shall also be deemed, for the purposes of this Chapter, to be use of such invention for the purposes of Government.

(3) Nothing contained in this Chapter shall apply in respect of any such importation making or using of any machine, apparatus or other article or of any such using of any process or of any such importation, using or distribution of any medicine or drug, as may be made by virtue of one or more of the conditions specified in section 47.

100. *Power of Central Government to use inventions for purposes of Government.*—(1) Notwithstanding anything contained in this Act, at any time after an application for a patent has been filed at the patent office or a patent has been granted, the Central Government and any person authorised in writing by it, may use the invention for the purposes of Government in accordance with the provisions of this Chapter.

(2) Where an invention has, before the priority date of the relevant claim of the complete specification, been duly recorded in a document, or tested or tried, by or on behalf of the Government or a Government undertaking, otherwise than in consequence of the communication of the invention directly or indirectly by the patentee or by a person from whom he derives title, any use of the invention by the Central Government or any person authorised in writing by it for the purposes of Government may be made free of any royalty or other remuneration to the patentee.

(3) If and so far as the invention has not been so recorded or tried or tested as aforesaid, any use of the invention made by the Central Government or any person authorised by it under sub-section (1), at any



time after the acceptance of the complete specification in respect of the patent or in consequence of any such communication as aforesaid, shall be made upon terms as may be agreed upon either before or after the use, between the Central Government or any person authorised under sub-section (1) and the patentee, or, as may in default of agreement be determined by the High Court on a reference under section 103:

Provided that in the case of any such use of any patent in respect of any medicine or drug or article of food the royalty and other remuneration shall in no case exceed four per cent of the net ex-factory sale price in bulk of the patented article (exclusive of taxes levied under any law for the time being in force and any commissions payable) determined in such manner as may be prescribed.

(4) The authorisation by the Central Government in respect of an invention may be given under this section, either before or after the patent is granted and either before or after the acts in respect of which such authorisation is given or done, and may be given to any person, whether or not he is authorised directly or indirectly by the applicant or the patentee to make, use, exercise or vend the invention or import the machine, apparatus or other article or medicine or drug covered by such patent.

(5) Where an invention has been used by or with the authority of the Central Government for the purposes of Government under this section, then, unless it appears to the Government that it would be contrary to the public interest so to do, the Government shall notify the patentee as soon as practicable of the fact and furnish him with such information as to the extent of the use of the invention as he may, from time to time reasonably require; and where the invention has been used for the purposes of a Government undertaking, the Central Government may call for such information as may be necessary for this purpose from such undertaking.

(6) The right to make, use, exercise and vend an invention for the purposes of Government under sub-section (1) shall include the right to sell the goods which have been made in exercise of that right, and a purchaser of goods so sold, and a person claiming through him, shall have the power to deal with the goods as if the Central Government or the person authorised under sub-section (1) were the patentee of the invention.

(7) Where in respect of a patent which has been the subject of an authorisation under this section, there is an exclusive licensee as is referred to in sub-section (3) of section 101, or where such patent has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention (including payments by way of minimum royalty), the notice directed to be given under sub-section (5) shall also be given to such exclusive licensee or assignor, as the case may be, and the reference to the patentee in sub-section (3) shall be deemed to include a reference to such assignor or exclusive licensee.

**101. Rights of third parties in respect of use of invention for purposes of Government.**—(1) In relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the purposes of Government—

- (a) by the Central Government or any person authorised by the Central Government under section 100; or
- (b) by the patentee or applicant for the patent to the order made by the Central Government,

the provisions of any licence, assignment or agreement granted or made, whether before or after the commencement of this Act, between the patentee or applicant for the patent (or any person who derives title from him or from whom he derives title) and any person other than the Central Government shall be of no effect so far as those provisions—

- (i) restrict or regulate the use for the purposes of Government of the invention, or of any model, document or information relating thereto, or
- (ii) provide for the making of payments in respect of any use of the invention or of the model, document or information relating thereto for the purposes of Government (including payments by way of minimum royalty),

and the reproduction or publication of any model or document in connection with the said use for the purposes of Government shall not be deemed to be an infringement of any copyright subsisting in the model or document.

(2) Where the patent, or the right to apply for or obtain the patent, has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention (including payments by way of minimum royalty), then, in relation to any use of the invention made for the purposes of Government by the patentee to the order of the Central Government, sub-section (3) of section 100 shall have effect as if that use were made by virtue of an authority given under that section; and any use of the invention for the purposes of Government by virtue of sub-section (3) of that section shall have effect as if the reference to the patentee included a reference to the assignor of the patent, and any sum payable by virtue of that sub-section shall be divided between the patentee and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the High Court on a reference under section 103.

(3) Where by virtue of sub-section (3) of section 100, payments are required to be made by the Central Government or persons authorised under sub-section (1) of that section in respect of the use of an invention for the purposes of Government and where in respect of such patent there is an exclusive licensee authorised under his licence to use the invention for the purposes of Government, such sum shall be shared by the patentee and such licensee in such proportions, if any, as may be agreed upon between them or as may in default of agreement be determined by the High Court on a reference under section 103 to be just, having regard to any expenditure incurred by the licensee—

- (a) in developing the said invention; or
- (b) in making payments to the patentees other than royalties or other benefits determined by reference to the use of the invention including payments by way of minimum royalty in consideration of the licence.

**\*102. Acquisition of inventions and patents by the Central Government.**—(1) The Central Government may, if satisfied that it is necessary that an invention which is the subject of an application for a patent or a patent should be acquired from the applicant or the patentee for a public purpose, publish a notification to that effect in the Official Gazette, and thereupon the invention or patent and all rights in respect of the invention or patent shall, by force of this section, stand transferred to and be vested in the Central Government.

(2) Notice of the acquisition shall be given to the applicant, and, where a patent has been granted, to the

patentee and other persons, if any, appearing in the register as having an interest in the patent.

(3) The Central Government shall pay to the applicant, or, as the case may be, the patentee and other persons appearing on the register as having an interest in the patent such compensation as may be agreed upon between the Central Government and the applicant, or the patentee and other persons; or, as may, in default of agreement, be determined by the High Court on a reference under section 103 to be just having regard to the expenditure incurred in connection with the invention and, in the case of a patent, the term thereof, the period during which and the manner in which it has already been worked (including the profits made during such period by the patentee or by his licensee whether exclusive or otherwise) and other relevant factors.

**103. Reference to High Court of disputes as to use for purposes of Government.**—(1) Any dispute as to the exercise by the Central Government or a person authorised by it of the powers conferred by section 100, or as to terms for the use of an invention for the purposes of Government thereunder or as to the right of any person to receive any part of a payment made in pursuance of sub-section (3) of that section or as to the amount of compensation payable for the acquisition of an invention or a patent under section 102, may be referred to the High Court by either party to the dispute in such manner as may be prescribed by the rules of the High Court.

(2) In any proceedings under this section to which the Central Government is a party, the Central Government may,—

(a) if the patentee is a party to the proceedings, petition by way of counter-claim for revocation of the patent on any ground upon which patent may be revoked under section 64; and

(b) whether a patentee is or is not a party to the proceedings, put in issue the validity of the patent without petitioning for its revocation.

(3) If in such proceedings as aforesaid any question arises whether an invention has been recorded, tested or tried as is mentioned in section 100, and the disclosure of any document regarding the invention, or of any evidence of the test or trial thereof, would, in the opinion of the Central Government, be prejudicial to the public interest, the disclosure may be made confidentially to the advocate of the other party or to an independent expert mutually agreed upon.

(4) In determining under this section any dispute between the Central Government and any person as to terms for the use of an invention for the purposes of Government, the High Court shall have regard to any benefit or compensation which that person or any person from whom he derives title, may have received, or may be entitled to receive, directly or indirectly in respect of the use of the invention in question for the purposes of Government.

(5) In any proceedings under this section, the High Court may at any time order the whole proceedings or any question of issue of fact arising therein to be referred to an official referee, commissioner or an arbitrator on such terms as the High Court may direct, and references to the High Court in the foregoing provisions of this section shall be construed accordingly.

(6) Where the invention claimed in a patent was made by a person who at the time it was made was in the service of the Central Government or of a State Government or as an employee of a Government undertaking and the subject-matter of the invention is certified

by the relevant Government or the principal officer of the Government undertaking to be connected with the work done in the course of the normal duties of the Government servant or employee of the Government undertaking, then, notwithstanding anything contained in this section, any dispute of the nature referred to in sub-section (1) relating to the invention shall be disposed of by the Central Government conformably to the provisions of this section so far as may be applicable, but before doing so the Central Government shall give an opportunity to the patentee and such other parties as it considers have an interest in the matter to be heard.

## CHAPTER XVIII

### SUITS CONCERNING INFRINGEMENT OF PATENTS

**104. Jurisdiction.**—No suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

**105. Power of court to make declaration as to non-infringement.**—(1) Notwithstanding anything contained in section 34 of the Specific Relief Act, 1963 (47 of 1963), any person may institute a suit for a declaration that the use by him of any process, or the making, use or sale of any article by him does not, or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or the licensee, if it is shown—

(a) that the plaintiff has applied in writing to the patentee or exclusive licensee for a written acknowledgement to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and

(b) that the patentee or licensee has refused or neglected to give such an acknowledgement.

(2) The costs of all parties in a suit for a declaration brought by virtue of this section shall, unless for special reasons the court thinks fit to order otherwise, be paid by the plaintiff.

(3) The validity of a claim of the specification of a patent shall not be called in question in a suit for a declaration brought by virtue of this section and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid or invalid.

(4) A suit for a declaration may be brought by virtue of this section at any time after the date of advertisement of acceptance of the complete specification of a patent, and references in this section to the patentee shall be construed accordingly.

**106. Power of court to grant relief in cases of groundless threats of infringement proceedings.**—(1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) threatens any other person by circulars or advertisements or by communications oral or in writing addressed to that or any other person with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him praying for the following reliefs that is to say—

(a) a declaration to the effect that the threats are unjustifiable;

(b) an injunction against the continuance of the threats; and

(c) such damages, if any, as he has sustained thereby.

(2) Unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the court may grant to the plaintiff all or any of the reliefs prayed for.

*Explanation.*—A mere notification of the existing of a patent does not constitute a threat of proceeding within the meaning of this section.

**107. Defences, etc., in suits for infringement.**—(1) In any suit for infringement of a patent, every ground on which it may be revoked under section 64 shall be available as a ground for defence.

(2) In any suit for infringement of a patent by the making, using or importation of any machine, apparatus or other article or by the using of any process or by the importation, use or distribution of any medicine or drug, it shall be a ground for defence that such making, using, importation or distribution is in accordance with any one or more of the conditions specified in section 47.

**108. Reliefs in suits for infringement.**—The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

**109. Right of exclusive licensee to take proceedings against infringement.**—(1) The holder of an exclusive licence shall have the like right as the patentee to institute a suit in respect of any infringement of the patent committed after the date of the licence, and in awarding damages or an account of profits or granting any other relief in any such suit the court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such.

(2) In any suit for infringement of a patent by the holder of an exclusive licence under sub-section (1), the patentee shall, unless he has joined as a plaintiff in the suit, be added as a defendant, but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

**110. Right of licensee under section 84 to take proceedings against infringement.**—Any person to whom a licence has been granted under section 84 shall be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent and, if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were the patentee, making the patentee a defendant; but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

**111. Restriction on power of court to grant damages or account of profits for infringement.**—(1) In a suit for infringement of a patent, damages or an account of profits shall not be granted against the defendant who proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that the patent existed.

*Explanation.*—A person shall not be deemed to have

been aware or to have had reasonable grounds for believing that a patent exists by reason only of the application to an article of the word "patent" "patented" or any word or words expressing or implying that a patent has been obtained for the article, unless the number of the patent accompanies the word or words in question.

(2) In any suit for infringement of a patent the court may, if it thinks fit, refuse to grant any damages or an account of profits in respect of any infringement committed after a failure to pay any renewal fee within the prescribed period and before any extension of that period.

(3) Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages or account of profits shall be granted in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment, unless the court is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.

(4) Nothing in this section shall affect the power of the court to grant an injunction in any suit for infringement of a patent.

**112. Restriction on power of court to grant injunction in certain cases.**—If in proceedings for the infringement of a patent endorsed or deemed to be endorsed with the words "Licences of right" (otherwise than by the importation of the patented article from other countries) the infringing defendant is ready and willing to take a licence upon terms to be settled by the Controller as provided in section 88, no injunction shall be granted against him, and the amount if any recoverable against him by way of damages shall not exceed double the amount which would have been recoverable against him as licensee if such a licence had been granted before the earliest infringement.

**113. Certificate of validity of specification and costs of subsequent suits for infringement thereof.**—(1) If in any proceedings before a High Court for the revocation of a patent under section 64 the validity of any claim of a specification is contested and that claim is found by the court to be valid, the Court may certify that the validity of that claim was contested in those proceedings and was upheld.

(2) Where any such certificate has been granted, then, if in any subsequent suit before a court for infringement of that claim of the patent or in any subsequent proceeding for revocation of the patent in so far as it relates to that claim, the patentee or other person relying on the validity of the claim obtains a final order or judgment in his favour, he shall be entitled to an order for the payment of his full costs, charges and expenses of an incidental to any such suit or proceeding properly incurred so far as they concern the claim in respect of which the certificate was granted, unless the court trying the suit or proceeding otherwise directs.

Provided that the costs as specified in this sub-section shall not be ordered when the party disputing the validity of the claim satisfies the court that he was not aware of the grant of the certificate when he raised the dispute and withdrew forthwith such defence when he became aware of such a certificate.

(3) Nothing contained in this section shall be construed as authorising courts hearing appeals from decrees or orders in suits for infringement or petitions for revocation to pass orders for costs on the scale referred to therein.

**114. Relief for infringement of partially valid specification.**—(1) If in proceedings for infringement of a patent it is found that any claim of the specification

being a claim in respect of which infringement is alleged, is valid, but that any other claim is invalid, the court may grant relief in respect of any valid claim which is infringed:

Provided that the court shall not grant relief except by way of injunction same in the circumstances mentioned in sub-section (2).

(2) Where the plaintiff proves that the invalid claim was framed in good faith and with reasonable skill and knowledge, the court shall grant relief in respect of any valid claim which is infringed subject to the discretion of the court as to costs and as to the date from which or an account of profits should be reckoned, and in exercising such discretion the court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.

115. *Scientific advisers.*—(1) In any suit for infringement or in any proceeding before a court under this Act, the court may at any time, and whether or not an application has been made by any party for that purpose, appoint an independent scientific adviser to assist the court or to inquire and report up any such question of fact or of opinion (not involving a question of interpretation of law) as it may formulate for the purpose.

(2) The remuneration of the scientific adviser shall be fixed by the court and shall include the costs of making a report and a proper daily fee for any day on which the scientific adviser may be required to attend before the court, and such remuneration shall be defrayed out of moneys provided by Parliament by law for the purpose.

## CHAPTER XIX

### APPEALS

116. *Appeals.*—(1) No appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.

(2) Save as otherwise expressly provided in sub-section 1), an appeal shall lie to a High Court from any decision, order or direction of the Controller under any of the following provisions, that is to say,

section 15, section 16, section 17, section 18, section 19, section 20, section 25, section 27, section 28, section 31, section 34, section 57, section 60, section 61, section 63, sub-section (3) of section 69, section 78, section 84, section 85, section 88(3) section 89, section 93, section 96 and section 97.

(3) Every appeal under this section shall be in writing and shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller, or within such further time as the High Court may in accordance with the rules made by it under section 158 allow.

117. *Procedure for hearing of appeals.*—(1) Every appeal before a High Court under section 116 shall be by petition and shall be in such form and shall contain such particulars as may be prescribed by rules made by the High Court under section 158.

(2) Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(3) Every such appeal shall be heard as expeditiously as possible and endeavour shall be made to decide the

appeal within a period of twelve months from the date on which it is filed.

## CHAPTER XX

### PENALTIES

118. *Contravention of secrecy provisions relating to certain inventions.*—If any person fails to comply with any direction given under section 35 or makes or causes to be made an application for the grant of a patent in contravention of section 39, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

119. *Falsification of entries in register, etc.*—If any person makes, or causes to be made, a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in such a register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both.

120. *Unauthorised claim of patent rights.*—If any person falsely represents that any article sold by him is patented in India, or is the subject of an application for a patent in India, he shall be punishable with fine which may extend to five hundred rupees.

*Explanation 1.*—For the purposes of this section, a person shall be deemed to represent—

(a) that an article is patented in India if there is stamped, engraved, or impressed on, or otherwise applied to, the article the word "patent" or "patented" or some other word expressing or implying that a patent for the article has been obtained in India;

(b) that an article is the subject of an application for a patent in India, if there are stamped, engraved or impressed on, or otherwise applied to, the article the words "patent applied for", "patent pending", or some other words implying that an application for a patent for the article has been made in India.

*Explanation 2.*—The use of words "patent", "patented", "patent applied for", "patent pending" or other words expressing or implying that an article is patented or that a patent has been applied for shall be deemed to refer to a patent in force in India, or to a pending application for a patent in India, as the case may be, unless there is an accompanying indication that the patent has been obtained or applied for in any country outside India.

121. *Wrongful use of words "patent office".*—If any person uses on his place of business or any document issued by him or otherwise the words "patent office" or any other words which would reasonably lead to the belief that his place of business is, or is officially connected with, the patent office, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

122. *Refusal or failure to supply information.*—(1) If any person refuses or fails to furnish—

(a) to the Central Government any information which he is required to furnish under sub-section (5) of section 10;

(b) to the Controller any information or statement which he is required to furnish by or under section 146,

he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person, being required to furnish any such information as is referred to in sub-section (1), furnishes information or statement which is false, and which he either knows or has reason to believe to be false or does not believe to be true, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

**123. Practice by non-registered patent agents.**—If any person contravenes the provisions of section 129, he shall be punishable with fine which may extend to five hundred rupees in the case of a first offence and two thousand rupees in the case of a second or subsequent offence.

**124. Offences by companies.**—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.**—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

## CHAPTER XXI

### PATENT AGENTS

**125. Register of patent agents.**—The Controller shall maintain a register to be called the register of patent agents in which shall be entered the names and addresses of all persons qualified to have their names so entered under section 126.

**126. Qualifications for registration as patent agents.**—(1) A person shall be qualified to have his name entered in the register of patent agents, if he fulfils the following conditions, namely:—

- (a) he is a citizen of India;
- (b) he has completed the age of 21 years;
- (c) he has obtained a degree from any University in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition,—

(i) is an advocate within the meaning of the Advocates Act, 1961 (25 of 1961); or

(ii) has passed the qualifying examination prescribed for the purpose;

(d) he has paid such fee as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), a person who has been practising as a patent agent before the 1st day of November, 1966 and has filed

not less than five complete specifications before the said day, shall, on payment of prescribed fee, be qualified to have his name entered in the register of patent agents.

**127. Rights of patent agents.**—Subject to the provisions contained in this Act and in any rules made thereunder, every patent agent whose name is entered in the register shall be entitled—

- (a) to practise before the Controller; and
- (b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

**128. Subscription and verification of certain documents by patent agents.**—(1) Subject to the provisions contained in sub-section (2) and to any rules made under this Act, all applications and communications to the Controller under this Act may be signed by a patent agent authorised in writing in this behalf by the person concerned.

(2) The following documents, namely:—

- (i) applications for patents;
- (ii) applications for the restoration of lapsed patents;
- (iii) applications for the sealing of patents after the time allowed for that purpose by or under sub-section (2), or sub-section (3) of section 43 has expired;
- (iv) applications for leave to amend;
- (v) applications for compulsory licences or for revocation; and
- (vi) notices of surrender of patents,

shall be signed and verified in the manner prescribed by the person making such applications or giving such notices:

Provided that if such person is absent from India, they may be signed and verified on his behalf by a patent agent authorised by him in writing in that behalf.

**129. Restrictions on practice as patent agents.**—(1) No person, either alone or in partnership with any other person, shall practise, describe or hold himself out as a patent agent, or permit himself to be so described or held out, unless he is registered as a patent agent or as the case may be, unless he and all his partners are so registered.

(2) No company or other body corporate shall practise, describe itself or hold itself out as patent agents or permit itself to be so described or held out.

**Explanation.**—For the purposes of this section, practise as a patent agent includes any of the following acts, namely:—

- (a) applying for or obtaining patents in India or elsewhere;
- (b) preparing specifications or other documents for the purposes of this Act or of the patent law of any other country;
- (c) giving advice other than of a scientific or technical nature as to the validity of patents or their infringement.

**130. Removal from register of patent agents and restoration.**—(1) The Central Government may remove the name of any person from the register when it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit to make—

- (i) that his name has been entered in the register by error or on account of misrepresentation or suppression of material fact;
- (ii) that he has been convicted of any offence and sentenced to a term of imprisonment or has been



guilty of misconduct in his professional capacity which in the opinion of the Central Government renders him unfit to be kept in the register.

(2) The Central Government may, on application and on sufficient cause being shown, restore to the register the name of any person removed therefrom.

**131. Power of Controller to refuse to deal with certain agents.**—(1) Subject to any rules made in this behalf, the Controller may refuse to recognise as agent in respect of any business under this Act—

- (a) any individual whose name has been removed from, and not restored to, the register;
- (b) any person who has been convicted of an offence under section 123;
- (c) any person, not being registered as a patent agent, who in the opinion of the Controller is engaged wholly or mainly in acting as agent in applying for patents in India or elsewhere in the name or for the benefit of the person by whom he is employed;
- (d) any company or firm, if any person whom the Controller could refuse to recognise as agent in respect of any business under this Act, is acting as a director or manager of the company or is a partner in the firm.

(2) The Controller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in India.

**132. Savings in respect of other persons, authorised to act as agents.**—Nothing in this Chapter shall be deemed to prohibit—

- (a) the applicant for a patent or any person, not being a patent agent, who is duly authorised by the applicant from drafting any specification or appearing or acting before the Controller; or
- (b) an advocate, not being a patent agent, from taking part in any proceedings under this Act otherwise than by way of drafting any specification.

## CHAPTER XXII

### INTERNATIONAL ARRANGEMENTS

**133. Notification as to convention countries.**—(1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to applicants for patents in India or to citizens of India similar privileges as are granted to its own citizens in respect of the grant of patents and the protection of patent rights, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

(2) A declaration under sub-section (1) may be made for the purposes either of all or of some only of the provisions of this Act, and a country in the case of which a declaration made for the purposes of some only of the provisions of this Act is in force shall be deemed to be a convention country for the purposes of those provisions only.

**134. Notification as to countries not providing for reciprocity.**—Where any country specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the grant of patents and the protection of patent rights as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other person,

- (a) to apply for the grant of a patent or be registered as the proprietor of a patent;
- (b) to be registered as the assignee of the proprietor of a patent; or

(c) to apply for a licence or hold any licence under a patent granted under this Act.

**135. Convention applications.**—(1) Without prejudice to the provisions contained in section 6, where a person has made an application for a patent in respect of an invention in a convention country (hereinafter referred to as the "basic application", and that person or the legal representative or assignee of that person makes an application under this Act for a patent within twelve months after the date on which the basic application was made, the priority date of a claim of the complete specification, being a claim based on matter disclosed in the basic application, is the date of making of the basic application.

**Explanation.**—Where applications have been made for similar protection in respect of an invention in two or more convention countries, the period of twelve months referred to in this sub-section shall be reckoned from the date on which the earlier or earliest of the said applications was made.

(2) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to the provisions contained in section 10, be made in respect of those inventions at any time within twelve months from the date of the earliest of the said applications for protection:

Provided that the fee payable on the making of any such application shall be the same as if separate applications have been made in respect of each of the said inventions, and the requirements of clause (b) of sub-section (1) of section 136 shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said inventions.

**136. Special provisions relating to convention applications.**—(1) Every convention application shall—

- (a) be accompanied by a complete specification; and
- (b) specify the date on which and the convention country in which the application for protection, or as the case may be, the first of such applications was made; and
- (c) state that no application for protection in respect of the invention had been made in a convention country before that date by the applicant or by any person from whom he derives title.

(2) Subject to the provisions contained in section 10, a complete specification filed with a convention application may include claims in respect of developments of, or additions to, the invention in respect of which the application for protection was made in a convention country, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make separate application for a patent.

(3) A convention application shall not be post-dated under sub-section (1) of section 17 to a date later than the date on which under the provisions of this Act the application could have been made.

**137. Multiple priorities.**—(1) Where two or more applications for patents in respect of inventions have been made in one or more convention countries and those inventions are so related as to constitute one invention, one application may be made by any or all of the persons referred to in sub-section (1) of section 135 within twelve months from the date on which the earlier or earliest of those applications was made, in respect of the inventions disclosed in the specifications which accompanied the basic applications.

(2) The priority date of a claim of the Complete specification, being a claim based on matters disclosed in one or more of the basic applications, is the date on which that matter was first so disclosed.

(3) For the purposes of this Act, a matter shall be deemed to have been disclosed in a basic application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgment of a prior art) in that application, or any documents submitted by the application for protection in support of and at the same time as that application, but no account shall be taken of any disclosure effected by any such document unless a copy of the document is filed at the patent office with the convention application or within such period as may be prescribed after the filing of that application.

**138. Supplementary provisions as to convention applications.**—(1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, in addition to the complete specification, copies of the specification or corresponding documents filed or deposited by the applicant in the patent office of the convention country in which the basic application was made, certified by the official chief or head of the patent office of the convention country, or otherwise verified to the satisfaction of the Controller, along with the application or within three months thereafter, or within such further period as the Controller may on good cause allow.

(2) If any such specification or other document is in a foreign language, a translation into English of the specification or document, verified by affidavit or otherwise to the satisfaction of the Controller, shall be annexed to the specification or document.

(3) For the purposes of this Act, the date on which an application was made in a convention country is such date as the Controller is satisfied, by certificate of the official chief or head of the patent office of the convention country or otherwise, is the date on which the application was made in that convention country.

**139. Other provisions of Act to apply to convention applications.**—Save as otherwise provided in this Chapter, all the provisions of this Act shall apply in relation to a convention application and a patent granted in pursuance thereof as they apply in relation to an ordinary application and a patent granted in pursuance thereof.

## CHAPTER XXIII

### MISCELLANEOUS

**140. Avoidance of certain restrictive conditions.**—(1) It shall not be lawful to insert—

- (i) in any contract for or in relation to the sale or lease of a patented article or an article made by a patented process; or
- (ii) in a licence to manufacture or use a patented article; or
- (iii) in a licence to work and process protected by a patent, a condition the effect of which may be—
  - (a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor, or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees, any article other than the patented article or an article other than that made by the patented process; or

(b) to prohibit the purchaser, lessee or licensee from using, or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the patented article or an article other than that made by the patented process, which is not supplied by the vendor, lessor or licensor or his nominee; or

(c) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee to use any process other than the patented process.

and any such condition shall be void.

(2) A condition of the nature referred to in clause (a) or clause (b) or clause (c) of sub-section (1) shall not cease to be condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the patented article or process.

(3) In proceedings against any person for the infringement of a patent, it shall be a defence to prove that at the time of the infringement there was in force a contract relating to the patent and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall—

- (a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;
- (b) validate a contract which, but for this section, would be invalid;
- (c) affect a condition in a contract for the lease of, or licence to use, a patented article, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required or to put or keep it in repair.

(5) The provisions of this section shall also apply to contracts made before the commencement of this Act if, and in so far as, any restrictive conditions declared unlawful by this section continue in force after the expiration of one year from such commencement.

**141. Determination of certain contracts.**—(1) Any contract for the sale or lease of a patented article or for licence to manufacture, use or work a patented article or process, or relating to any such sale, lease or licence, whether made before or after the commencement of this Act, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the contract or in any other contract, be determined by the purchaser, lessee, or licensee, as the case may be, of the patent on giving three months notice in writing to the other party.

(2) The provisions of this section shall be without prejudice to any right of determining a contract exercisable apart from this section.

**142. Fees.**—(1) There shall be paid in respect of the grant of patents and applications therefor, and in respect of other matters in relation to the grant of patents under this Act, such fees as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Controller, the Controller shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the patent office, the document shall be deemed not to have been filed at the office until the fee has been paid.

(4) Where a principal patent is granted later than two years from the date of filing of the complete specification, the fees which have become due in the meantime may be paid within a term of three months from the date of the recording of the patent in the register.

**143. Restrictions upon publication of specifications.**—Subject to the provisions of Chapter VII, an application for a patent, and any specification file in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller or be open to public inspection at any time before the date of advertisement of acceptance of the application in pursuance of section 23.

**144. Reports of examiners to be confidential.**—The reports of examiners to the Controller under this Act shall not be open to public inspection or be published by the Controller; and such reports shall not be liable to production or inspection in any legal proceeding unless the court certifies that the production or inspection is desirable in the interests of justice, and ought to be allowed.

**145. Publication of patented inventions.**—The Controller shall issue periodically a publication of patented inventions containing such information as the Central Government may direct.

**146. Power of Controller to call for information from patentees.**—(1) The Controller may, at any time during the continuance of the patent, by notice in writing, require a patentee or a licensee, exclusive, or otherwise, to furnish to him within two months from the date of such notice or within such further time as the Controller may allow, such information or such periodical statement as to the extent to which the patented invention has been commercially worked in India as may be specified in the notice.

(2) Without prejudice to the provisions of sub-section (1), every patentee and every licensee (whether exclusive or otherwise) shall furnish in such manner and form and at such intervals (not being less than six months) as may be prescribed statements as to the extent to which the patented invention has been worked on a commercial scale in India.

(3) The Controller may publish the information received by him under sub-section (1) or sub-section (2) in such manner as may be prescribed.

**147. Evidence of entries, documents, etc.**—(1) A certificate purporting to be signed by the Controller as to any entry, matter or thing which he is authorised by this Act or any rules made thereunder to make or do, shall be *prima facie* evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or omitted to be done.

(2) A copy of any entry in any register or of any document kept in the patent office or of any patent, or an extract from any such register or document, purporting to be certified by the Controller and sealed with the seal of the patent office shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the original.

(3) The Controller or any other officer of the patent office shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special causes.

**148. Declaration by infant lunatic etc.**—(1) If any person is, by reason of minority, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any court possessing jurisdiction in respect of his property may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

**149. Service of notices, etc., by post.**—Any notice required or authorised to be given by or under this Act, and any application or other document so authorised or required to be made or filed be given, made or filed by post.

**150. Security for costs.**—If any party by whom notice of any opposition is given under this Act or by whom application is made to the Controller for the grant of a licence under a patent neither resides nor carries on business in India, the Controller may require him to give security for the costs of the proceedings, and in default of such security being given may treat the opposition or application as abandoned.

**151. Transmission of orders of courts to Controller.**—(1) Every order of the High Court on a petition for revocation, including orders granting certificates of validity of any claim, shall be transmitted by the High Court to the Controller who shall cause an entry, thereof and reference thereto to be made in the register.

(2) Where in any suit for infringement of a patent or in any suit under section 106 the validity of any claim a specification is contested and that claim is found by the court to be valid or not valid, as the case may be, the court shall transmit a copy of its judgment and decree to the Controller who shall on receipt thereof cause an entry in relation to such proceeding to be made in the prescribed manner in a supplemental record.

(3) The provision of sub-sections (1) and (2) shall also apply to the court to which appeals are preferred against decisions of the courts referred to in those sub-sections.

**152. Transmission of copies of specifications, etc., and inspection thereof.**—Copies of all such specifications, drawings and amendments left at the patent office as become open to public inspection under the provisions of this Act, shall be transmitted, as soon as may be, after the printed copies thereof are available, to such authorities as the Central Government may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be specified by those authorities and with the approval of the Central Government.

**153. Information relating to patents.**—A person making a request to the Controller in the prescribed manner for information relating to any such matter as may be prescribed as respects any patent specified in the request

or as respects any application for a patent so specified shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.

**154. Loss or destruction of patents.**—If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on application made in the prescribed manner and on payment of the prescribed fee, cause a duplicate thereof, to be sealed and delivered to the applicant.

**155. Reports of Controller to be placed before Parliament.**—The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution of this Act by or under the Controller.

**156. Patent to bind Government.**—Subject to the other provisions contained in this Act, a patent shall have to all intents the like effect as against Government as it has against any person.

**157. Right of Government to sell or use forfeited articles.**—Nothing in this Act shall affect the power of the Government or of any person deriving title directly or indirectly from the Government to sell or use any articles forfeited under any law for the time being in force.

**158. Power of High Courts to make rules.**—The High Court may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act.

**159. Power of Central Government to make rules.**—  
(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

- (i) the form and manner in which any application for a patent, any specifications or drawings and any other application or document may be filed in the patent office;
- (ii) the time within which any act or thing may be done under this Act, including the manner in which and the time within which any matter may be advertised under this Act;
- (iii) the fees which may be payable under this Act and the manner of payment of such fees;
- (iv) the matters in respect of which the examiner may make a report to the Controller;
- (v) the form of request for the sealing of a patent;
- (vi) the form and manner in which and the time within which any notice may be given under this Act;
- (vii) the provisions which may be inserted in an order for restoration of a patent for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased;
- (viii) the establishment of branch offices of the patent office and the regulation generally of the business of the patent office, including its branch offices;
- (ix) the maintenance of the register of patents and the matter to be entered therein;
- (x) the matters in respect of which the Controller shall have powers of a civil court;
- (xi) the time when and the manner in which the register and any other document open to inspection may be inspected under this Act;
- (xii) the qualifications of, and the preparation of a roll of, scientific advisers for the purpose of section 115;
- (xiii) the manner in which any compensation for

acquisition by Government of an invention may be paid;

- (xiv) the manner in which the register of patent agents may be maintained; the conduct of qualifying examinations for patent agents; and matters connected with their practice and conduct, including the taking of disciplinary proceedings against patent agents for misconduct;
- (xv) the regulation of the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the patent office; and the inspection of indexes and abridgments and other documents;
- (xvi) any other matter which has to be or may be prescribed.

(3) The power to make rules under this section shall be subject to condition of the rules being made after previous publication.

**160. Rules to be placed before parliament.**—Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or in the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect the case may be: so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**161. Special provisions with respect to certain applications deemed to have been refused under Act 2 of 1911.**—

(1) Where, as a result of action taken by the Controller under section 12 of the Atomic Energy Act, 1948 (29 of 1948), or under section 20 of the Atomic Energy Act, 1962 (33 of 1962), an application for a patent made before the commencement of this Act could not be accepted within the time specified for the purpose in the Indian Patents and Designs Act, 1911 (2 of 1911) (hereafter in this section referred to as the repealed Act), and, consequently, was deemed to have been refused by reason of sub-section (4) of section 5 of the repealed Act, the application may, if the applicant, or, if he is dead his legal representative makes a request in that behalf to the Controller in the prescribed manner within three months from the commencement of this Act, be revived and shall be disposed of as if it were an application pending at the commencement of this Act to which the provisions of this Act apply by reason of sub-section (3) of section 162.

(2) The Controller may, before proceeding to act upon any such request as is referred to in sub-section (1), refer the matter to the Central Government for directions as to whether the invention is one relating to atomic energy and shall act in conformity with the directions issued by it.

(3) Where in pursuance of any such application as is referred to in sub-section (1) a patent is granted, the rights of the patentee shall be subject to such conditions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the patented invention before the date of advertisement of the acceptance of the complete specification.

(4) A patent granted in pursuance of any such application as is referred to in sub-section (1) shall be dated as of the date on which the request for reviving such appli-

cation was made under sub-section (1).

162. *Repeal of Act 2 of 1911 in so far as it relates to patents and savings.*—(1) The Indian Patents and Designs Act, 1911, in so far as it relates to patents, is hereby repealed, that is to say, the said Act shall be amended in the manner specified in the Schedule.

(2) Notwithstanding the repeal of the Indian Patents and Designs Act, 1911, in so far as it relates to patents—

(a) the provisions of section 21A of that Act and of any rules made thereunder shall continue to apply in relation to any patent granted before the commencement of this Act in pursuance of that section, and

(b) the renewal fee in respect of a patent granted under that Act shall be as fixed thereunder.

(3) Save as otherwise provided in sub-section (2) the provisions of this Act shall apply to any application for a patent pending at the commencement of this Act and to any proceedings consequent thereon and to any patent granted in pursuance thereof.

(4) The mention of particular matters in this section shall not prejudice the general application of the General Clauses Act, 1897 (10 of 1897), with respect to repeals.

(5) Notwithstanding anything contained in this Act, any suit for infringement of a patent or any proceeding for revocation of a patent, pending in any court at the commencement of this Act, may be continued and disposed of, as if this Act had not been passed.

163. *Amendment of Act 43 of 1958.*—In sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958, the words and figures "and the Controller of Patents and Designs for the purposes of the Indian Patents and Designs Act, 1911 (2 of 1911)" shall be omitted.

### THE SCHEDULE

(See section 162)

#### AMENDMENTS TO THE INDIAN PATENTS AND DESIGNS ACT, 1911

1. Long title—Omit "Inventions and".
2. Preamble—Omit "inventions and".
3. Section 1—In sub-section (1) omit "Indian Patents and"
4. section 2—
  - (a) omit clause (1);
  - (b) in clause (2) omit "(as respects designs)";
  - (c) for clause (3), substitute—
 

"(3) "controller" means the Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 (43 of 1958);"
  - (d) in clause (5) for "trade mark as defined in section 478" substitute "trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958)";
  - (e) omit clause (6);
  - (f) in clause 7, after sub-clause (ee) insert,—
 

"(f) in relation to the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay;

(g) in relation to the Union territory of Pondicherry, the High Court at Madras.";
  - (g) omit clauses (8), (10) and (11);
  - (h) for clause (12), substitute—
 

"(12) "patent office" means the patent office referred to in section 74 of the Patents Act, 1970."
5. Omit Part I.

6. For section 51B, substitute—

"51B. *Designs to bind Government.*—A registered design shall have to all intents the like effect as against Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1970, shall apply to registered designs as they apply to patents."

7. In section 54, for "The provisions of this Act", substitute "The provisions of the Patents Act, 1970".

8. Omit sections 55 and 56.

9. Section 57—For sub-section (1), substitute:—

"(1) There shall be paid in respect of the registration of designs and applications therefor, and in respect of other matters relating to designs under this Act such fees as may be prescribed by the Central Government."

10. Omit section 59A.

11. Section 61—Omit sub-section (1).

12. For section 62, substitute—

"62. *Power of Controller to correct clerical errors.*—The Controller may, on request in writing accompanied by the prescribed fee, correct any clerical error in the representation of a design or in the name or address of the proprietor of any design or in any other matter which is entered upon the register of designs."

13. Section 63—

(a) in sub-section (1), omit "to a patent or" and "patent or";

(b) in sub-section (2), omit "patent or" and for "patents or designs, as the case may be," substitute "designs,";

(c) in sub-section (3), omit "patent or" wherever that expression occurs;

(d) in sub-section (4), omit "to a patent or".

14. Section 64—

(a) in sub-section (1), omit "patents or" and omit the word "either" wherever it occurs;

(b) in sub-section (5), omit clause (a).

15. Omit section 66.

16. Section 67—Omit "for a patent, or for amendment of an application or of a specification, or".

17. Section 69—In sub-section (1), omit "to grant a patent for an invention or".

18. Section 71A—Omit "or from patents, specifications and other."

19. Omit section 72.

20. Omit sections 74A and 75.

21. Section 76—

(a) in sub-section (1), omit "other";

(b) in sub-section (2), in clause (c), omit "opponent".

22. Section 77—

(a) in sub-section (1)—

(i) in clauses (c) and (d), omit "specifications";

(ii) for clause (e), substitute—

"(e) providing for the inspection of documents in the patent office and for the manner in which they may be published;"

(iii) omit clause (eee);

(b) omit sub-section (2A).

23. Omit section 78.

24. For section 78A, substitute—

"78A. *Reciprocal arrangement with United Kingdom and other Common-wealth countries.*—(1) Any person who has applied for protection for any design in the United Kingdom or his legal representative or assignee shall, either alone or jointly with any other person, be entitled to claim that the



registration of the said design under this Act shall be in priority to other applicants and shall have the same date as the date of the application in the United Kingdom:

Provided that—

- (a) the application is made within six months from the application for protection in the United Kingdom; and
  - (b) nothing in this section shall entitle the proprietor of the design to recover damages for infringements happening prior to the actual date on which the design is registered in India.
- (2) The registration of a design shall not be invalidated by reason only of the exhibition or use of, or the publication of a description or representation of, the design in India during the period specified in this section as that within which the applica-

tion may be made.

- (3) The application for the registration of a design under this section must be made in the same manner as an ordinary application under this Act.
- (4) Where it is made to appear to the Central Government that the legislature of any such Commonwealth country as may be notified by the Central Government in this behalf has made satisfactory provision for the protection of designs registered in India, the Central Government may, by notification in the Official Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of designs registered in that Commonwealth country."
25. Omit sections 78B, 78C, 78D and 78E.
26. Omit the Schedule.

## PART I

### HOUSING DEPARTMENT NOTIFICATION

Simla-2, the 1st February, 1973

No. 8-1/72-HOU.—Whereas it appears to the Governor, Himachal Pradesh, that the land is required to be taken urgently by the Government at public expense for a public purpose, namely for Establishment of Workshop and Construction of Warehouses\* by Himachal Pradesh Agro-Industries Corporation Ltd; (A Government Undertaking), it is hereby declared that the land described in the specification below is required urgently for the above purpose.

2. The case being of urgent nature, it is directed under the provision of section 17(4) of the Land Acquisition Act, 1894, that the provisions of section 5-A(2) of the said Act shall not apply to this case.

3. This declaration is made under the provisions of section 6, read with section 17(4) of the Land Acquisition Act, 1894, to all whom it may concern and under the provisions of section 7 of the said Act, the Collector, Solan is hereby directed to take order for the acquisition of the said land.

4. A plan of the land may be inspected in the office of the Collector, Solan district, Solan.

5. It is also hereby directed under section 17 Sub-section (1) of the Land Acquisition Act, 1894 that the Collector may on the expiration of fifteen days from the publication of the notice under section 9, sub-section (1) of the said Act, take possession of the said land.

#### SPECIFICATION

District: SOLAN Tehsil: KANDAGHAT

Village 1	Khasra No. 2	Area Big. Bis. 3 4	
		3	4
DHANGYAR (PARWANOO)	105 106	2	17
	Total	10	9

By order,  
P. K. MATTOO,  
Secretary.

## PART II

### PUBLIC WORKS DEPARTMENT NOTIFICATION

Simla-3, the 24th January, 1973

No. SE-II-R-54/XX-1302-5.—Whereas it appears to the Governor Himachal Pradesh, that land is likely to be required to be taken by the Himachal Pradesh Government at the public purpose namely for the construction of Sungri-Rohru road, it is hereby notified that land in the locality described below is likely to be acquired for the above purpose.

This notification is made under the provision of section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of the powers conferred by the aforesaid section the Governor, Himachal Pradesh is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested, who has any objection to the acquisition of the said land in the locality may within thirty days of the publication of this notification file an objection in writing before the Collector of Land Acquisition, Himachal Pradesh Public Works Department, Simla-9.

#### SPECIFICATION

District: SIMLA Tehsil: ROHRU

Village 1	Khasra No. 2	Area Big. Bis. 3 4	
		3	4
ROHRU	1160/634/1 579/1	0	8
	Total	0	13

M. L. BANSAL,  
Superintending Engineer,  
2nd Circle, H.P.P.W.D., Simla.

**PART V**

In the Court of Shri A. L. Soni, P.C.S., District Judge,  
Solan and Sirmur district at Solan (H.P.)

CASE No. 1/2 OF 1972

Date of Institution: 28th November, 1972

Shrimati Durgi widow of Shri Sadhu Ram Resident  
of Subathu Tehsil Kandaghat, District Solan (Himachal  
Pradesh) Petitioner.

Versus

1. General Public.
  2. Shrimati Lajwanti wife of Shri Som Nath resident  
of Subathu, Tehsil Kandaghat, District Solan, Himachal  
Pradesh.
  3. Shri Som Nath resident of Mahanvir Colony, Yamu-  
na Nagar, District Ambala Respondents.
- Petition for the grant of Probate on the basis of will  
made by Shri Norata Ram deceased in favour of the  
Petitioner.

**NOTICE TO THE GENERAL PUBLIC**

Whereas the above named petitioner having applied  
for the grant of probate in the estate of Shri Norata Ram  
the deceased on the basis of a will executed in favour  
of the petitioner who died at Subathu on 3rd October,  
1971. Notice is hereby issued to the General Public  
in order to put in objection, if any, by any one for the  
grant of probate applied for on the 21st day of February,  
1973 in this Court at Solan failing which *ex-parte* pro-  
ceedings will be taken in the matter so far the General  
Public is concerned.

Given under my hand and the seal of the Court this  
1st day of February, 1973.

A. L. SONI,  
District Judge, Solan.

**INDUSTRIES DEPARTMENT  
(GEOLOGICAL CELL)****TENDER NOTICE**

Simla-6, the 30th January, 1973

No. 5-7/73-Ind(Glg).—Sealed tenders are invited for  
the grant of contract of Dugiari Quarry comprising an  
area of 178 Kanals 16 marlas, corresponding to Khasra  
numbers 243 and 244 of mauza Dugiari, Tehsil and  
District Kangra under rules 28 and 31 of the Himachal  
Pradesh Minor Minerals (Concession) Revised Rules,  
1971, on the terms and conditions laid down below:—

1. The tenders should be sent to me by name supers-  
cribed as "Tender for Dugiari Quarry" on or  
before 2nd March, 1973, which shall be opened  
at 3.00 P. M. on the same day.
2. The tenders shall be opened in the presence of the  
tenderers, who may like to be present at the  
stipulated time.
3. The rate of tender will be per annum and may be  
quoted accordingly.
4. The interested tenderer may send a sum of Rs. 100  
in cash or crossed payment draft in favour of the  
undersigned, along with the tender as earnest  
money, failing which the tender shall not be  
accepted in any case.
5. The earnest money shall be refunded to the success-  
ful tenderer or adjusted against the security  
within a period of three months from the date  
of final decision of the tenders.
6. The undersigned reserves the right to accept or  
reject the tender, without assigning any reason  
thereto.

SUBHASH SHARMA,  
Geologist.